United States Court of Appeals for the Second Circuit



APPENDIX

74-1851

BPAS

United States Court of Appeals

For the Second Circuit.

ROBERT A. W. CARLETON, JR., D/B/A CARLETON BROTHERS COMPANY,

Plaintiff-Appellant,

-against-

UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER, RICHARD STOBEAUS, AND CAUDILL, ROWLETT AND SCOTT

Defendants-Appellees

On Appeal From the District Court of the United States For the Southern District of New York

JOINT APPENDIX

AMEND & AMEND

Attorneys for Union Free School
District No. 8, Town of Orangetown,
Rockland County, New York, George W.
Renc, Lee N. Starker, Edward C.
Manning, Walter Reiner, and
Richard Stobeaus
40 Wall Street
New York, New York 10005

BERNSTEIN, WEISS, PARTER, COPLAN & WEINSTEIN Attorneys for Defendant Caudill, Rowlett & Scott

120 East 41st Street New York, N.Y. 10017

ROBERT A. W. CARLETON, JR. Plaintiff-Appellant, Appearing Pro Se 1078 Anderson Avenue Palisades, New Jersey 07024



PAGINATION AS IN ORIGINAL COPY

Page
Complaint1
Defendants Caudill, Rowlett & Scott's Motion for Summary Judgment11
Affidavit of Norman A. Coplan, Sworn to March 13, 1974 In Support of Motion
Exhibit A - Summons
Page 1)
Exhibit C - Transcript
Exhibit F - Memo Endorsed
Motion for Summary Judgment55
Motion of Remaining Defendants for Summary Judgment56
Affidavit of Matthew F. Sarnell, sworn to March 19. 1974, In Support of Motion
Exhibit A - Summons and Complaint (Referring back to page 18 and pages 1 through 10)65 Exhibit B - Transcript (Referring back to pages 28 through 48)66
Affidavit of Robert A. W. Carleton, Jr., sworn to April 5, 1973 In Opposition to Motion
Exhibit A - Pre-Trial Order in Prior Proceeding84
Exhibit B - Letter of the Continental Insurance Companies to Robert A. W. Carleton, Jr., and Julia S. Carleton, dated May 9, 1969103 Exhibit C - Letter of the United States District Judge Murry I. Gurfein to Robert A. W.
Carleton, Jr., dated June 20, 1972

	Page
Encorsement on Motion for Remaining Defendants on Summary Judgment	106
off admirer a graduent control of the control of th	
Judgment	107
Plaintiff's Motion for Renewal and/or Reargument	108
Affidavit of Robert A. W. Carleton, Jr., Sworn to April 22, 1974, in Support of Motion	110
Exhibit A - Letter of Robert A. W.	
Carleton, Jr., to United States	
District Court Judge Milton Pollack	
dated August 26, 1970	129
Exhibit B - Letter of United States	
District Court Judge Milton Pollack	
to Robert A. W. Carleton, Jr., dated	
September 17, 1970	.132
Exhibit C - Letter of Robert A. W.	
Carleton, Jr., to United States	
District Court Judge Milton Pollack	
Dated September 19, 1970	.134
Dated September 19, 1970	
Exhibit D - Letter of Robert A. W.	
Carleton, Jr., to Commissioner of	
Insurance and Banking, State of New	136
Jersey, dated January 28, 1972	. 130
Exhibit E - Letter of New Jersey	
Department of Insurance to Robert	
A. W. Carleton, Jr., dated February	120
25, 1972	.130
Exhibit F - Letter of New Jersey	
Department of Lasurance to Robert	
A. W. Carleton, Jr., dated March 14,	120
1972	.139
Exhibit G - Letter of Robert A. W.	
Carleton, Jr., to New Jersey Department	110
of Insurance, dated March 22, 19/2	.140
Wehibit H - Letter of Robert A. W.	
Contain Ir to New York Attorney	
General, dated April 13, 1972	141
Webibit I - Letter of Emil V. Pilz to	
Pohert A. W. Carleton, Jr., dated May	
8 1972	148
Ryhibit J - Letter of Robert A. W. Carleton	
Tr to United States District Court	
Tudes Wilton Pollack dated May 11, 1972	149

	Page
Exhibit K - Letter of United States	
District Court Today William P. 15	
District Court Judg Milton Pollack to	
Robert A. W. Carleton, Jr., dated May 12, 1972	.150
Exhibit L - Letter of Robert A. W. Carleton,	
Jr., to United States District Court Judge	
Milton Pollack, dated May 13, 1972 Exhibit M - Letter of Robert A. W. Carleton,	151
Jr., to United States District Court Judge	
Milton Pollack, dated May 19, 1972	152
Exhibit N - Letter of Robert A. W. Carleton,	. 132
Jr., to United States Senator Clifford P. Case,	
dated May 31, 1972	154
Exhibit O - Letter of United States Senator	, 134
Clifford P. Case to Robert A. W. Carleton,	
Jr., dated June 6, 1972	156
Exhibit P - Letter of Robert A. W. Carleton,	
Jr., to Presiding Judge for the United States	
District Court, Southern District of New York,	
dated June 16, 1972	157
Exhibit Q - Letter of United States District	
Court Judge Murry I Gurfein to Robert A. W.	
Carleton, Jr., dated June 20, 1972	162
Exhibit R - Letter of Robert A. W. Carleton, Jr.,	
to Eugene Shaffel, Esquire, dated June 23, 1972	163
Exhibit S - Letter of Robert A. W. Carleton, Jr.	
to United States Supreme Court, dated July 3, 1972	
with Reply	164
Exhibit T - Letter of Robert A. W. Carleton, Jr.,	
to United States District Court Judge Milton	
Pollack, dated July 17, 1972	165
Exhibit U - Letter of United States District	
Court Judge Milton Pollack to Robert A. W.	
Carleton, Jr., dated July 19, 1972	166
Exhibit W - Letter of Robert A. W. Carleton, Jr.,	
to United States District Court Judge Milton	
Pollack, dated August 24, 1972	167
Exhibit X - Letter of Robert A. W. Carleton, Jr.,	
to Chief Justice Warren E. Burger, United	
States Supreme Court, dated August 31, 1972 Exhibit Y - Letter of United States Supreme	108
Court Clerk to Robert A. W. Carleton, Jr.,	
dated September 7, 1972	171
Exhibit Z - Letter of Robert A. W. Carleton, Jr.,	1/1
to Ethics Committee, New York Bar Association,	
detail December 9 1072	

	Page
Exhibit AA - Letter of Committee on Grievances	
of the Association of the Bar of the City	
of New York to Report A. W. Carleton Jr.,	
dated December 14, 1972	174
Exhibit BB - Letter of Robert A. W. Carleton,	
Mr., to Ethics Committee, New York Bar	
Association, dated December 19, 1972	175
Exhibit CC - Letter of Committee on Grievances	
of the Association of the Bar of the City	
of New York to Robert A. W. Carleton, Jr.,	
Dated January 16, 1973	176
Exhibit DD - Letter of Committee on Grievances	
of the Association of the Bar of the City	
of New York to Robert A. W. Carleton, Jr.,	
dated January 19, 1973	177
Exhibit EE - Letter of Robert A. W. Carleton,	
Mr., to Emil V. Pilz, Esquire, dated February	
13, 1973	178
Exhibit FF - Letter of Emil V. Pilz, Esquire, to	100 (3.0)
Exhibit FF - Letter of Emil v. Filz, Esquire, to	
Robert A. W. Carleton, Jr., dated February	179
21, 1973 Faculty Various Faculty	
whibit GG - Letter of Bernard Verney, Esquire,	
to Robert A. W. Carleton, Jr., dated	180
February 28, 1973	
Exhibit HH - Letter of Robert A. W. Carleton,	
Jr., to Bernard Verney, Esquire, dated	181
March 5, 1973	
Affidavit of Matthew F. Sarnell, Sworn to May 27,	•
1974, in Opposition to Motion	182
1974, In opposition to inclositive	
Endorsement on Plaintiff's Motion for Renewal and/or	
Reargument	184
Reply Affidavit of Robert A. W. Carleton, Jr.,	
come to May Q 1974 in Support of Motion for	
Renewal and/or Reargument	185
Notice of Appeal	188
Relevant Docket Entries	190

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted]

Plaintiff, ROBERT A. W. CARLETON, JR., D/B/A CARLETON BROTHERS COMPANY, complaining of the defendants, UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER, RICHARD STOBALUS, and CAUDILL, ROWLETT AND SCOTT, respectfully shows to this Court and alleges:

- 1. That at all times hereinafter mentioned the plaintiff
 ROBERT A. W. CARLETON, JR., was and still is a citizen of the State of
 New Jersey.
- 2. The defendant, Union Free School District No. 8, is a municipal corporation organized and existing under the laws of the State of New York, having its principal office in the State of New York, hereinafter referred to as "School District."
- The matter in controversy, exclusive of interests and costs, exceeds the sum of \$10,000.00.
- 4. That on the 9th day of August, 1950, the plaintiff and the defendant, School District, entered into a written contract for a good and

valuable consideration by the terms of which the plaintiff was to perform general construction for a new high school.

- 5. That plaintiff has duly performed the contract on its part to be performed, so far as he was permitted to do so.
- 6. That the School District has breached the contract in various instances and among them the following:
- (a) Failure to furnish with reasonable promptness
 the additional instructions required by Article 3 of the General
 Conditions;
- (b) Failure to follow the Progress Schedule submitted by plaintiff;
- (c) Failure to compensate the plaintiff for extra work and charges in accordance with Article 15 of the General Conditions;
- (d) Failure to authorize an extension of time in accordance with Article 18 of the General Conditions;
- (e) Failure to give notice of work not conforming to the contract in accordance with Article 19 of the General Conditions;
- (f) Without reasonable ground, served a three-day notice pursuant to Article 21 of the General Conditions;
- (g) Unreasonably required the employment of certain subcontractors;
- (h) Allowed the architect to exceed his proper function and arbitrarily supervise and direct the work.

- 7. Written verified claims, upon which this cause of action are founded, were presented to the governing body of the School District within three (3) months after the accrual of the claims alleged herein and the said governing body having power to adjust or pay said claims, has neglected or refused to make an adjustment or payment thereof, for thirty (30) days after such presentment.
- 8. By reason of the foregoing, the plaintiff has been damaged in the sum of \$1,783,534.66, together with interest, included therein, special damages for loss of reasonable profit, impairment of private capital resources, interest and related costs for use of borrowed money, personal services rendered in excess of the contract requirements, and, upon information and belief said School District had notice that the plaintiff was seeking a reasonable profit and compensation for his personal services, that plaintiff was required to secure and indemnify the surety company which had placed a performance and payment bond, and that plaintiff's private capital resources were committed.
- 9. That the services performed and the materials furnished under the contract with the School District as aforesaid, were of the reasonable value of \$3,281,735.45, no part of which has been paid except the sum of \$1,843,142.00, leaving a balance due and unpaid of \$1,438,593.45.
- 10. Upon information and belief, defendant Caudill, Rowlett and Scott is a partnership, the members of which are citizens of the

State of Texas.

- 11. Upon information and belief, the defendants, George W. Renc, Lee N. Starker, Edward C. Manning, Walter Reiner and Richard Stobacus, were at all times hereinafter mentioned and still are, citizens of the State of New York.
- 12. The defendants had knowledge and notice of the valuable contract between the plaintiff and the School District.
- and Scott, George W. Renc, Lee N. Starker, Edward C. Manning, Walter Reiner and Richard Stobaeus, with knowledge and without reasonable justification, induced the School District to breach its contract with the plaintiff as aforesaid and induced the School District to interfere with remedies available to the plaintiff under the contract.
- 14. Upon information and belief, by reason of the foregoing, the School District was induced to violate, repudiate and break its contract as aforesaid and to refuse to arbitrate claims and disputes arising under the contract and the plaintiff has thereby incurred a greater expense in the performance of the aforesaid contract, had been prevented from receiving the contract benefits and reasonable profit, and has been otherwise injured and damaged all to his damage in the sum of \$1,783,534.66.

- 15. Upon information and belief, the School District and the defendant, Caudill, Rowlett and Scott, entered into a written contract by the terms of which, Caudill, Rowlett and Scott agreed to perform certain architectural services and other duties related to the construction of a new high school.
- 16. Upon information and belief, the defendant, Caudill,
 Rowlett and Scott, prepared the contracts between the School District
 and plaintiff and the School District and the other prime contractors.
- 17. Upon information and belief, the performance by the defendant, Caudill, Rowlett and Scott, inured to the benefit of the plaintiff.
- 18. The defendant, Caudill, Rowlett and Scott, upon information and belief breached its contract with the School District in many ways, among them the following:
- (a) Failed to issue the necessary and required certificates of payment; issued certificates that were not required nor necessary;
- (b) Failed to keep accounts and generally administer the business and supervision of the work;
- (c) Failed to protect and guard against defects and deficiencies in the work of the contractors;
- (d) Failed to certify that the work of the contractors has been satisfactorily performed; improperly certified that the work of the contractors had been satisfactorily performed;

- (e) Failed to state in writing in what respects the contractors failed to perform;
 - (f) Failed to exercise general supervision.
- 19. During the calendar year of 1964, plaintiff commenced an action in the United States District Court for the Southern District of New York, against the defendants herein predicated upon the facts set forth hereinbefore and the said action was filed under Index No. 64-CIV-3498.
- 20. Thereafter, the said action was assigned for all purposes to the Honorable Milton Pollack, a judge of the United States District Court for the Southern District of New York.
- 21. On or about the 10th day of December, 1969, in the said action, a final order or judgment dismissing the complaint on the merits, and with prejudice, without costs, was entered in favor of defendants, George W. Renc, Lee N. Starker, Edward C. Manning, Walter Reiner and Richard Stobaeus and the said order settled and discontinued the said action as to defendants Union Free School District No. 8, Town of Orangetown, Rockland County, New York, and Caudill, Rowlett and Scott, which order or judgment was duly entered and is presently still in full force and effect.
- 22. That the said order was dictated on the record by the United States District Court Judge Milton Pollack subsequent to and

based upon a verbal stipulation on the record on the said date by and between counsel for all parties, in the presence of and after hearing the plaintiff.

- 23. That contemporaneously, and in pursuance to the said stipulation of settlement, the plaintiff herein issued various general releases in favor of the defendants herein.
- 24. That the said agreement of settlement upon which the said order of dismissal and discontinuance was entered, was entered into by the plaintiff as the result of threats, pressure, extortion, and overbearing on the part of the defendants, was entered into for no consideration, the act having been done as the result of fraud and mistake on the part of the plaintiff and is not a true expression of the meaning of the plaintiff.
- 25. Immediately thereafter, and in early 1970, and at numerous times thereafter, plaintiff duly notified the defendants of his desire to rescind the said general release and stipulation of settlement and discontinuance because of the aforesaid threats, pressure, extortion, overbearing, failure of consideration, fraud, mistake and because the said documents are not a true expression of the meaning of the plaintiff, and the plaintiff duly requested that the defendants reinstate the prior civil action heretofore referred to in greater detail; but the defendants refused and still refuse to rescind the said general releases and stip-

ulations and to reinstate the prior civil action.

- 26. As a result of the said action of the defendants, plaintiff has been damaged in the sum of \$6,789,197.42, being the sum total of the causes of action then existing in the prior civil action.
- 27. That the aforesaid actions were done by the defendants with malice and forethought.
- 28. That as a result of this malice and forethought plaintiff has been damaged and seeks an additional sum of \$6,789,197.42 in punitive damages.

WHEREFORE, plaintiff respectfully prays that the final order or judgment dismissing the complaint on the merits, with prejudice and without costs in favor of defendants, George W. Renc, Lee N. Starker, Edward C. Manning, Walter Reiner and Richard Stobaeus and settling and discontinuing said action as to defendants Union Free School District No. 8, Town of Orangetown, Rockland County, New York and Caudill, Rowlett and Scott, which was duly entered on or about the 10th day of December, 1969, in an action in the United States District Court for the Southern District of New York wherein the plaintiff herein was the plaintiff therein and wherein the defendants herein were defendants therein, be rescinded, together with all general releases and stipulations executed or entered into contemporaneously therewith, and that upon such rescission, that the prior action be

directed to continue forthwith so that the plaintiff may pursue his claims as set forth hereinbefore and in the complaint filed in the said prior action; that the plaintiff be awarded the sum of \$6,789,097.42 in general damages, the same sum in punitive damages, together with interest and the costs and disbursements of this action.

Dated New York, New York, this 20th day of February, 1974.

Yours, etc.

ROBERT A. W. CARLETON, JR. c/b/a CARLETON BROTHERS COMPANY, Appearing Pro Se, Office & P.O. Address 1078 Anderson Avenue Palisade, New Jersey

VERIFICATION

STATE OF NEW JERSEY)
COUNTY OF BERGEN) 85.:

ROBERT A. W. CARLETON, JR., being duly sworn, according to law, deposes and says that he is the plaintiff in the foregoing action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his own knowledge and belief except as to those matters therein stated to be alleged upon information and belief; and as to those matters, he believes them to be true.

/s/ ROBERT A. W. CARLETON, JR.

ROBERT A. W. CARLETON, JR.

Sworn to before me this 19th day of February, 1974

/s/ William A. O'Neil
WILLIAM A. O'NEIL
Notary Public of New Jersey
My Commission Expires Sept. 12, 1978.

DEFENDANT CAUDILL, ROWLETT AND SCOTT'S MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted]

SIR:

PLEASE TAKE NOTICE that the defendant, Caudill, Rowlett and Scott, will move the Court, before the Hon. Inzer B. Wyatt, at Room 705, United States Courthouse, Foley Square, New York, New York, on the 29th day of March, 1974, at 2:30 P.M. in the afternoon, or as soon thereafter as counsel can be heard, for an order dismissing the action as against said defendant, Caudill, Rowlett and Scott, under Rule 12(b)(6), Rules of Civil Procedure, because the complaint, a copy of which is annexed hereto, fails to state a claim against said defendant upon which relief can be granted, or, in the alternative, to grant summary judgment for said defendant under Rule 56, Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact, as more particularly appears in the affidavit of Norman A. Coplan, Esq., and the papers attached thereto.

Dated: New York, New York March , 1974

TO: Robert A. W. Carleton, Jr. 1078 Anderson Avenue Palisade, New Jersey Yours, etc.,

COPLAN & WEISS, PARTER,
COPLAN & WEINSTEIN
Attorneys for Defendant
Caudill, Rowlett and Scott
120 East 41st Street
New York, New York 10017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted]

STATE OF NEW YORK) ss.:

NORMAN A. COPLAN, being duly sworn, deposes and says:

- 1. I am a member of the firm of Bernstein, Weiss, Parter,
 Coplan & Weinstein, attorneys for the defendant, Caudill, Rowlett and
 Scott, and submit this affidavit in support of the motion of said defendant for summary judgment dismissing the complaint herein.
- 2. The plaintiff has instituted an action pro se, a copy of which complaint is annexed hereto as Exhibit "A", against a school district alleging breach of a construction contract and against several other defendants, including the defendant, Caudill, Rowlett and Scott, alleging an inducement of the breach of such contract. The plaintiff, in 1964, instituted an action against these very same defendants for the same causes of action, a copy of the complaint in said 1964 action being annexed hereto as Exhibit "B". Your depondent's firm represented the defendant, Caudill, Rowlett and Scott, in said 1964 action and your depondent is fully familiar with all of the facts and occurrences therein.
 - 3. In the 1964 action (64 Civ. 3498) after an extended period

of pre-trial preparation (including depositions, interrogatories, pretrial memoranda and order, etc.), the case was assigned to Judge Milton Pollack to fix the trial date. At such time, various conferences were held between the attorneys for the respective parties and Judge Pollack and a settlement of the action worked out. To assure that the plaintiff fully understood and accepted the settlement, Judge Pollack had the plaintiff sworn and carefully queried him as to his understanding of the terms of the settlement and as to his acceptance of the same. The stipulation of settlement was read into the record and it was ordered that the action was settled on the terms and conditions expressed on the record by counsel and that the action be dismissed with prejudice. A copy of the transcript of the stenographer's minutes is herewith attached as Exhibit "C". To complete the proceedings, the attorneys for the respective parties executed a stipulation discontinuing the action with prejudice (a copy of which is annexed hereto as Exhibit "D") and the plaintiff duly executed general releases to the defendants. A copy of the general release running to the defendant, Caudill, Rowlett and Scott, is annexed hereto as Exhibit "E".

4. The instant action, against which this motion is directed, is substantially identical except for the amount of damages sought, to the 1964 action, which action was settled, discontinued with prejudice

and general releases furnished. The complaint herein in the cause of action alleged against the defendant, Caudill, Rowlett and Scott (which defendant was the architect for the building project involved) is embellished in comparison to the original complaint by not only alleging an alleged inducement of a breach of contract, but by allegations that the contract between Caudill, Rowlett and Scott, the architect, and its client, Union Free School District No. 8, "inured to the benefit" of the plaintiff and that the said defendant allegedly breached his contract with his client. However, in the 1964 action, plaintiff sought to amend his complaint, seeking to plead that he was a third-party beneficiary to the contract between the architect and his client, and that motion was heard. and denied by Judge Lloyd F. McMahon on the ground that plaintiff was not a third-party beneficiary of the contract between Caudill, Rowlett and Scott and Union Free School District No. 8. A copy of such determination is annexed hereto as Exhibit "F". In any event, even if it were assumed arguendo that the plaintiff could be a third-party beneficiary of a contract between the architect and his client, an alleged breach of such contract would have occurred prior to 1964 and any cause of action arising therefrom would have been barred by the Statute of Limitations of the State of New York, which provides for a six-year limitation in respect to

contract actions.

5. The plaintiff, in the present complaint, in seeking to resurrect the original action instituted in 1964, alleges that the settlement of the said action and the order of dismissal and discontinuance that was issued thereon, were the result of "threats, pressures, extortion and overbearing on the part of the defendants." As will be pointed out in the memorandum submitted herewith, a motion to set aside the order of the Court should be made in the same action in which it is entered and within one year and, consequently, the complaint herein must be dismissed. In any event, however, the fact is that the plaintiff was represented during settlement discussions and throughout the 1964 case by eminent and reputable attorneys, and none of the defendants, including Caudill, Rowlett and Scott, had any direct contact, communication or conversations with the plaintiff when settlement was being discussed. Your deponent, as the attorney of Caudill, Rowlett and Scott, never had any discussions with the plaintiff concerning a settlement. All discussions were between attorneys or between attorneys and Judge Pollack. In addition, settlement was also discussed between Judge Pollack and the plaintiff, with only the plaintiff's attorney present. The acceptance of the settlement by the plaintiff was voluntarily made by him, on advice of his counsel, and the allegation that it was entered as the result of

extortion, threats or pressure, at least insofar as the defendant, Caudill, Rowlett and Scott, and its attorneys are concerned, is absolutely without any basis in fact.

It also should be pointed out to the Court that this plaintiff commenced an action pro se in 1973 against all of the attorneys who were involved in the 1964 action, including his own attorneys, and against his own bonding company, and against Judge Milton Pollack (73 Civ. 1946). In its complaint, the plaintiff rehashed all of the elements of the 1964 action and further alleged that he had settled the same through coercion and sought damages against all of the defendants therein named. The complaint in that action was dismissed by Judge Marvin E. Frankel on the ground that it failed to state a cause of action upon which relief can be granted and a judgment of dismissal was entered on January 2, 1974. It is respectfully submitted that given the background leading to the present action, it would appear that the institution of such present action constitutes an obvious abuse of process.

6. If the plaintiff were permitted to institute an action de novo in 1974 to seek damages arising from events which allegedly occurred in 1962 or 1963, he, in any event, would be barred by the applicable Statute of Limitations of the State of New York, as well as by the doctrine of

laches. Consequently, under any theory, judgment would have to be awarded to the defendant, Caudill, Rowlett and Scott, dismissing the complaint.

WHEREFORE, your deponent respectfully requests that judgment be awarded in favor of Caudill, Rowlett and Scott and against plaintiff by dismissing the complaint herein as against said defendant.

/s/ NORMAN A. COPLAN

NORMAN A. COPLAN

Sworn to before me this 13th day of March, 1974.

/s/ PHILIP WEINSTEIN

PHILIP WEINSTEIN
Notary Public, State of New York
No. 41-4199701
Qualified in Queens County
Commission Expires March 30, 1976

EXHIBIT A ANNEXED TO AFFIDAVIT OF NORMAN A. COPLAN SWORN TO MARCH 13, 1974 IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

ROBERT A. W. CARLETON, JR., doing business as CARLETON BROTHERS COMPANY,

Plaintiff

74 CIVIL ACTION FILE NO. 812

-V-

SUMMONS

UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER, RICHARD STOBAEUS, and CAUDILL, ROWLETT AND SCOTT,

Defendants

To the above named Defendant:

You are hereby summoned and required to serve upon Robert A. W. Carleton, Jr., plaintiff, whose address 1078 Anderson Avenue, Palisade, New Jersey an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: February 20, 1974

/s/ RAYMOND F. BURGHARDT Clerk of Court.

/s/ B. EDWARDS
Deputy Clerk.

(Reprinted herein at pages 1 through 10)

EXHIBIT B ANNEXED TO AFFIDAVIT OF NORMAN A. COPLAN SWORN TO MARCH 13, 1974, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

ROBERT A. W. CARLETON, JR., doing business as CARLETON BROTHERS COMPANY,

Plaintiff

64 CIVIL ACTION FILE NO. 3498

v.

UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER, RICHARD STOBAEUS, and CAUDILL, ROWLETT AND SCOTT,

SUMMONS

Defendants

To the above named Defendant:

You are hereby summoned and required to serve upon AVALIONE & MULDERIG, plaintiff's attorneys, whose address 76 Demarest Avenue, West Nyack, New York an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: November 18, 1964

/s/ JAMES E. VALECHE
Clerk of Court.

/s/ HARRY C. KREINIK
Deputy Clerk.

EXHIBIT B ANNEXED TO AFFIDAVIT OF NORMAN A. COPLAN SWORN TO MARCH 13, 1974 IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ROBERT A. W. CARLETON, JR., doing business as CARLETON BROTHERS COMPANY,

Plaintiff.

-against-

COMPLAINT

64 Civil

UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER, RICHARD STOBAEUS, and CAUDILL, ROWLETT AND SCOTT,

Defendants.

-----x

Plaintiff, by his attorneys, AVALLONE & MULDERIG, complaining of the defendants, alleges as follows:

FIRST COUNT

- 1. That at all times hereinafter mentioned, the plaintiff ROBERT A. W. CARLETON, JR., was and still is a citizen of the State of New Jersey.
- 2. The defendant, UNION FREE SCHOOL DISTRICT
 NO. 8, is a municipal corporation organized and existing
 under the laws of the State of New York, having its
 principal office in the State of New York, hereinafter
 referred to as School District.

- 3. The matter in controversy, exclusive of interest and costs, exceeds the sum of TEN THOUSAND (\$10,000.00) DOLLARS.
- 4. That on the 9th day of August, 1960, the plaintiff and the defendant, School District, entered into a written contract for a good and valuable consideration, by the terms of which the plaintiff was to perform general construction for a new high school.
- 5. That plaintiff has duly performed the contract on its part to be performed, so far as he was permitted to do so.
- 6. That the School District has breached the contract in various instances, among them the following:
- (a) failure to furnish with reasonable promptness the additional instructions required by Article 3 of the General Conditions;
- (b) failure to follow the Progress Schedule submitted by plaintiff;
- (c) failure to compensate the plaintiff for extra work and changes in accordance with Article 15 of General Conditions;

- (d) failure to authorize an extension of time in accordance with Article 18 of General Conditions;
- (e) failure to give notice of work not conforming to the contract in accordance with Article 19 of General Conditions;
- (f) without reasonable ground, served a three-day notice pursuant to Article 21 of General Conditions;
- (g) unreasonably required the employment of certain subcontractors;
- (h) allowed the architect to exceed his proper function and arbitrarily supervise and direct the work.
- 7. Written verified claims, upon which this cause of action are founded, were presented to the governing body of the School District within three (3) months after the accrual of the claims alleged herein and the said governing body having power to adjust or pay said claims, has neglected or refused to make an adjustment or payment thereof, for thirty (30) days after such presentment.
- 8. By reason of the foregoing, the plaintiff has been damaged in the sum of \$1,783,534.66, together

with interest, including therein, special damages for loss of reasonable profit, impairment of private capital resources, interest and related costs for use of borrowed money, personal services rendered in excess of the contract requirements and, upon information and belief, said School District had notice that the plaintiff was seeking a reasonable profit and compensation for his personal services, that plaintiff was required to secure and indemnify the surety company which had placed a performance and payment bond, and that plaintiff's private capital resources were committed.

SECOND COUNT

- 9. Repeats the allegations contained in paragraphs "1", "2", "3", "4", "5", "6" and "7" herein.
- 10. That the services performed and the materials furnished under the contract with the School District as aforesaid, were of the reasonable value of \$3,281.736.45, no part of which has been paid except the sum of \$1,643,142.00, leaving a balance due and unpaid of \$1,438,593.45.
- 12. Upon information and belief, the defendant CAUDILL, ROWLETT and SCOTT, is a partnership, the members of which are citizens of the State of Texas.

- 13. Upon information and belief, the defendants, GOERGE W. RENC, LEE N. STARKER, EDWARD C.

 MANNING, WALTER REINER and RICHARD STOBAEUS, were at all times hereinafter mentioned and still are, citizens of the State of New York.
- 14. The defendants had knowledge and notice of the valuable contract between the plaintiff and the School District.
- 15. Upon information and belief, defendants CAUDILL, ROWLETT and SCOTT, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER and RICHARD STOBAEUS, with knowledge and without reasonable justification, induced the School District to breach its contract with the plaintiff as aforesaid and induced the School District to interfere with remedies available to the plaintiff under the contract.
- 16. Upon information and belief, by reason of the foregoing, the School District was induced to violate, repudiate and break its contract as aforesaid, and to refuse to arbitrate claims and disputes arising under the contract, and the plaintiff has thereby incurred a greater expense in the performance of the aforesaid contract, has been prevented from receiving the contract

benefits and reasonable profit, and has been otherwise injured and damaged, all to his damage in the sum of \$1,783,534.66.

WHEREFORE, plaintiff demands judgment on the first count in the sum of \$1,783,534.66, on the second count in the sum of \$1,438,593.45, and on the third count in the sum of \$1,783,534.66, together with interest and the costs and disbursements of this action.

AVALLONE & MULDERIG Attorneys for Plaintiff Office & P.O. Address 76 Demarest Avenue West Nyack, New York 914 Elmwood 8-0050

EXHIBIT B ANNEXED TO AFFIDAVIT OF NORMAN A. COPLAN SWORN TO MARCH 13, 1974 IN SUPPORT OF MOTION

VERIFICATION

COUNTY OF ROCKLAND SS.:

ROBERT A. W. CARLETON, JR., being duly sworn, deposes and says:

That deponent is the plaintiff named in the within action;

That deponent has read the foregoing Complaint, and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matter therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true.

/s/ Robert A. W. Carleton, Jr. ROBERT A. W. CARLETON, JR.

Sworn to before me this

12th day of November 1964.
/s/ Anthony F. Avallone
ANTHONY F. AVALLONE
Attorney and Counsellor at Law
State of New York
Qualified in Rockland County No. 44-5129700
Commission Expires March 30, 1966

EXHIBIT C ANNEXED TO AFFIDAVIT OF NORMAN A. COPLAN SWORN TO MARCH 13, 1974 IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ROBERT A. W. CARLETON, JR., doing business as CARLETON BROTHERS COMPANY,

Plaintiff,

: 64 Civ. 3498

vs.

UNION FREE SCHOOL DISTRICT NO. 8,
TOWN OF ORANGETOWN, ROCKLAND COUNTY,
NEW YORK, GEORGE W. RENC, LEE N. STARKER,
EDWARD C. MANNING, WALTER REINER, RICHARD
STOBAEUS and CAUDILL, ROWLETT and SCOTT,

Defendants.

Before:

HON. MILTON POLLACK, District Judge.

New York, December 10, 1969 10:15 a.m.

APPEARANCES

GARBARINI, SCHER, DeCICCO & BERARDINO, Esqs., Attorneys for Plaintiff 500 Fifth Avenue New York, New York

BY: CHARLES J. GARBARINI, Esq., of Counsel.

LEXOW & JENKINS, Esqs.,
Attorneys for Union Free School, District No. 8 et al
56 Park Avenue
Suffern, New York

By: DAVID H. MOSES, Esq., of Counsel

BERNSTEIN, WEISS, HAMMER & PARTER, Esqs.,
Attorneys for Caudill, Rowlett & Scott
120 East 41st Street, New York, New York
By: CHARLES LAKE, Esq., of Counsel.

ALSO PRESENT: Arthur D. McNeill Firemen's Insurance Company of Newark, N.J.

Carleton-direct

THE COURT: This case is before the Court on Rule

2 assignment by the Chief Judge made this day, assigning
this case to this Court for all purposes and adding the
same to the individual assignment calendar of this Court.

Gentlemen, are you ready?

MR. GARBARINI: Yes, your Honor.

May we proceed, your Honor?

THE COURT: Yes.

MR. GARBARINI: Mr. Carleton, will you take the stand, please?

ROBERT A. W. CARLETON, JR., called as a witness in his own behalf, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GARBARINI:

Q Mr. Carleton, you are the plaintiff in an action in the United States District Court for the Southern District of New York, which action is entitled Robert A. W. Carleton, Jr., doing business as Carleton Brothers Company, plaintiff, against Union Free School District No. 8, Town of Orangetown, Rockland County, New York, George W. Renc, Lee N. Starker, Edward C. Manning, Walter Reiner, Richard Stobaeus and Caudill, Rowlett and Scott as defendants; is that right, sir?

A Yes.

Carleton/direct

- Q This action was started some years ago through another attorney who represented you named Mr. Abalone, is that correct?
 - A That is correct. November 1964.
- Q During the course of said action, there were various depositions taken of yourself and other parties to this action.
 - A Yes.
- Q And there were various exhibits and interrogatories propounded to the various parties.
 - A Yes.
- Q Did you thereafter appear in court on several occasions in connection with this matter, both in connection with the pretrial order and the consideration of settlement?

A Yes.

MR. GARBARINI: I would like to offer in evidence a memorandum, which was submitted on behalf of the Union Free School District, as Plaintiff's Exhibit 1.

THE COURT: Any objection?

MR. LAKE: No objection.

MR. MOSES: No objection.

(Plaintiff's Exhibit No. 1 receivied in evidence.)

Q Mr. Carleton, are you aware that a proposal of settlement has been made by the Defendant school board and

Carleton/direct

by the Defendant Caudill, Rowlett and Scott?

A Yes.

Q I show you this extract of minutes of the meeting of the Board of Education held on September 23, 1969 relating to the settlement and ask you if you have seen that.

A Yes.

MR. GARBARINI: I offer this in evidence as Plaintiff's Exhibit No. 2, please.

MR. MOSES: No objection.

MR. LAKE: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 2 received in evidence.)

Q Mr. Carleton, during the pendency of the construction job in which you were involved and which is the subject matter of this litigation, did you have occasion to deposit with the Firemen's Insurance Company of Newark, New Jersey certain securities?

A Yes.

Q And did you execute a document giving to them certain rights in real estate and any recovery that may be made from this case?

A Yes.

Q Did you further give to them a right to certain securities which were held by other lending institutions

Carleton/direct

from whom you and your mother borrowed money?

A Yes.

Are you aware that the school board has offered the sum of \$100,000 on its part as settlement of all claims against it?

A Yes.

Q Are you aware that the Defendant Caudill, Rowlett and Scott have offered the sum of \$25,000 in full settlement of all claims by you against them?

A Yes.

Q Do you understand that this \$125,000 total settlement will be all the monies that are forthcoming from these defendants in full settlement of this claim?

A Yes.

Q And is that satisfactory to you based upon certain concessions to be made by the bonding company?

A Yes.

Q Are you aware that this \$125,000 to be paid by the defendants, that \$100,000 will be paid over to the bonding company in partial satisfaction of its claims against you?

A I don't think it should be partial, it should be complete.

MR. GARBARINI: Just listen.

Carleton/direct

THE COURT: Are you aware, Mr. Carleton, that \$100,000 is to be paid over to the bonding company?

THE WITNESS: Yes.

- Q Are you aware that the remaining \$25,000 will be paid to your attorneys, Garbarini, Scher, DeCicco & Berardino in full satisfaction of their claim for services rendered and disbursements?
 - A Yes.
 - Q And that there will be no cash payable to you?
 - A Yes.
 - Q And are you aware further that the bonding company is to retain the securities which it now has in its possession for its own use and benefit in further payment of your indebtedness?
 - A Yes.
 - Q Are you aware that in consideration of the bonding compnay receiving the aforesaid \$100,000 and retaining the securities in their possession, that they are to release any and all claims against you and your mother and the properties wherein they held second mortgages on real estate and wherein they held a claim against securities which you deposited with lending institutions, and that you are to be completely free of any further liability to the bonding company and that your properties other than the securities

Carleton/direct

held by the bonding company are to be completely released to you?

A And to my mother, Julia S. Carleton.

THE COURT: What is the address of Julia S. Carleton?
THE WITNESS: 1078 Anderson Avenue, Palisade, New
Jersey.

THE COURT: In short terms, you understand that you and your mother are both receiving a full general release from the bonding company and the bonding company, in exchange for delivering such a release, is getting \$100,000 in cash and the free and total rights to the securities that it holds in its possession?

THE WITNESS: Yes.

THE COURT: That is satisfactory to you?

THE WITNESS: That is.

MR. GARBARINI: Let the record show that Mr.

Arthur D. McNeill, a representative of the Firemen's Insurance Company of Newark, New Jersey is present and I would like to read into the record, your Honor, a stipulation of settlement of this action.

THE COURT: That can be done. I would like to have Mr. McNeill, on behalf of his company, acknowledge the understanding as expressed by the witness, to be the understanding which will bind the bonding company since it is a condition

Carleton/direct

of the settlement that is being proposed by the parties before the Court.

MR. GARBARINI: May we excuse Mr. Carleton, then?

THE COURT: Mr. McNeill is an attorney, isn't he?

MR. GARBARINI: No, he is not.

THE COURT: Then we will excuse Mr. Carleton for a moment and have Mr. McNeill take the stand.

(witness excused.)

ARTHUR D. MCNEILL, having been first

duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GARBARINI:

THE COURT: Let me ask, Mr. McNeill, what is your position with the bonding company?

THE WITNESS: I am a claims examiner.

THE COURT: Are you authorized as a claims examiner, and on the basis of the express instructions of your superiors, to commit your company to the proposed aspects of the settlement referring to the company?

THE WITNESS: I am, your Honor.

THE COURT: Did you hear the questions by Mr.Garbarini to Mr. Carleton and Mr. Carleton's responses?

THE WITNESS: I did.

THE COURT: Did you understand what the terms were as expressed in those questions and in those responses?

McNeill/direct

THE WITNESS: I did, sir.

THE COURT: Now, are you, on behalf of the bonding company, prepared as a condition of the settlement which is being made in court today in this action, to commit the bonding company to the terms of the general release of Mr.Carleton and his mother, Julia S. Carleton, in consideration of the receipt by the bonding company of \$100,000 of the amount being paid in settlement of this action and the relinquishment by Mr. Carleton and Julia S. Carleton of all right, title and interest in and to the securities which are being held by the bonding company at the present time?

THE WITNESS: I am, your Honor.

THE COURT: That is satisfactory to you and to your superiors?

THE WITNESS: It is.

BY MR. GARBARINI:

Q Mr. McNeill, your commitment this morning is in conformance with the understanding reached yesterday between Mr. Condon, Scaglione and yourself together with myself at your office, is that correct?

A That's right.

THE COURT: Will you identify who those people are?

MR. GARBARINI: Mr. James M. Condon is secretary

of the Firemen's Insurance Company of Newark, New Jersey.

McNeill/direct

Mr. Philip Scaglione, superintendent of the Eastern bond claims for the Firemen's Insurance Company of Newark, New Jersey.

That's it, sir.

THE COURT: All right.

(Witness excused.)

THE COURT: Mr. Carleton, you may come back.

ROBERT A. W. CARLETON, JR. resumed:

MR. GARBARINI: I would now like to read into the record a stipulation of settlement agreed upon between the respective parties and the bonding company, who is represented and physically present in the person of Arthur D. McNeill.

It is stipulated and agreed by and between the respective parties hereto as follows:

This action is hereby settled on the following terms and conditions:

The defendant Union Free School District No. 8 will pay to or on behalf of the plaintiff the sum of \$100,000 as hereinafter set forth:

The defendant Caudill, Rowlett and Scott will pay to or on behalf of the plaintiff the sum of \$25,000 as hereinafter set forth.

Upon payment of the foregoing sums, the plaintiff will deliver to the defendants appropriate general releases

Carleton

covering all claims referrable to the within action together with a stipulation of discontinuance and the school board will execute and deliver to plaintiff a release of all claims.

The co-defendant Caudill, Rowlett and Scott will likewise deliver to the plaintiff a release of all claims.

The releases of the plaintiff are to be executed simultaneously herewith and to be held by its attorney for delivery to the defendants upon compliance with the terms and conditions of this stipulation.

If it shall become necessary for the plaintiff's attorney to deliver the releases to the school board in advance to be held in escrow in order that the funds may be secured, counsel is hereby authorized to do so.

The Firemen's Insurance Company of Newark, New Jersey, hereinafter referred to as the bonding company, has a claim against Robert A. W. Carleton, Jr. and his mother, Juliz 1. Carleton, in a sum in excess of \$400,000 and they have given certain collateral to the bonding company in connection therewith.

The bonding company and the plaintiff hereby stipulate and agree as follows:

1: That the bonding company is to receive the sum of \$100,000 from the within \$125,000 settlement on account of said indebtedness.

Carleton

- 2: That the bonding company is to retain for its own use and benefit the securities presently in its possession which were deposited as collateral on account of said indebtedness to be held free and clear of all claims on the part of the Carletons.
- 3: That in consideration of the foregoing, the bonding company will release Robert A. W. Carleton, Jr. and Julia S. Carleton from any and all claims and will release and relinquish any and all claims, right and interest it may have by way of assignment, lien, mortgage, note, judgment, or otherwise in or to funds, securities, real property or otherwise that may exist as collateral on behalf of Robert A. W. Carleton, Jr. and his mother Julia S. Carleton, and will accordingly notify all holders of collateral and real property.
- 4: That the bonding company will execute and deliver appropriate releases, satisfactions of judgment and any other documents required to accomplish the foregoing.

It is further stipulated and agreed that out of the aforesaid settlement of \$125,000, the sum of \$25,000 will be paid to Garbarini, Scher, DeCicco & Berardino as and for their legal fee and disbursements in full settlement thereof.

It is further understood and agreed that the checks will be made payable to the plaintiff and to his attorneys

Carleton

to be endorsed respectively by the plaintiff and by the attorneys and deposited in the attorneys' special account to be held in escrow pending receipt of all appropriate documents and to consummate the compliance of the settlement.

MR. MOSES: I think there should be added that the action is discontinued on the merits against the individual defendants George W. Renc, Lee N. Starker, Edward C. Manning, Walter Reiner, Richard Stobaeus, the last party not being served.

THE COURT: The discontinuance to be with prejudice and without costs?

MR. MOSES: Right, with prejudice and without costs.

There also should be prepared a stipulation settling and discontinuing the action with prejudice and without costs and in accordance with the terms of the stipulation against the defendant Union Free School District No. 8 of the Town of Orangetown, Rockland County and Caudill, Rowlett and Scott, architects.

THE COURT: Why would it not be appropriate at the conclusion of this hearing this morning for the Court to order the action settled on the terms and conditions expressed on the record by counsel, dismissing the action with prejudice and without costs as against the individuals as named by Mr. Moses and settling the action as to the

Carleton

remaining defendants, the Union Free School, Caudill, Rowlett and Scott, on the terms and conditions of the settlement and discontinuing on the basis of that settlement with prejudice and without costs?

MR. GARBARINI: I think that would be fine.

THE COURT: So that hereafter the only surviving boligation is the obligation of the settlement itself and the lawsuit has been terminated.

MR. GARBARINI: Fine.

THE COURT: Is that satisfactory?

MR. MOSES: Yes, your Honor.

MR. LAKE: Your Honor, I would like to add that it is further agreed and understood that the bonding company, in view of the assignment, will execute general releases to all the defendants.

THE COURT: Is there any objection to that, Mr. McNeill?

MR. MCNEILL: No, your Honor.

THE COURT: That will be added as a condition and term of the settlement.

MR. LAKE: I would also like to add that there is no reason for the defendant Caudill, Rowlett and Scott to give any rlease because they have no claims.

MR. GARBARINI: There were counterclaims.

Carleton

MR. LAKE: No counterclaims.

MR. MOSES: No counterclaims.

MR. GARBARINI: All right, then we would merely indicate that it is understood that if the defendant Caudill, Rowlett and Scott had any claims against the plaintiff, they are hereby--

THE COURT: Embraced within and in all respects settled and terminated and released by the terms of the settlement herein.

MR. GARBARINI: Thank you. Fine.

MR. MOSES: I have one more thing to add that if your Honor will look at Exhibit 2, you will see one member of the board abstained from voting. We don't have a unanimous resolution, which some bonding companies may raise a question, and the only way we can obviate any question if your Honor will put on the record a statement, if you have the opinion, that this settlement is in the best public interest.

THE COURT: I have been in close contact with this matter since March 12th, 1969, having had numerous discussions in respect of the facts and the merits with counsel and been privileged to discuss the matter with the plaintiff and representatives of the architect's firm. In the course of the discussions, which have been had with the Court, with a view

Carleton

nated in the proceedings today, the Court has come to the firm belief and is of the opinion, and so states as part of the settlement proceedings here, that this settlement is highly desirable in behalf of all of the parties and is expressly and in every implication in the best public interests of the Union Free School District, Town of Orangetown, Rockland County.

MR. MOSES: Thank you. That's it.

Now, the mechanics of how we are going to get the money is as follows:

First, the stenographer will send us a certified transcript of the minutes. Mr. Garbarini will send us in duplicate the instruments pertaining to the school district that are set forth in the stipulation, the release from the bonding company, the release from Mr. Carleton and anything else that is required.

Our office will receive those instruments in escrow and we will furnish one copy to the attorney for the bonding company or the bank.

Now, the bonding company that I am using here are the bonding attorneys that pass upon the bond resolutions and the loan by a bank to the school district. It is not the same bonding company that we are talking about, The Firemen's

Carleton

Fund.

I will furnish them and the bank's counsel and leave with them a complete set of papers, the other set will be for the school district.

Upon receipt of the check from the bank, I will immediately forward that check of \$100,000 payable to the plaintiff and his attorney to be disposed of in accordance with the settlement.

THE COURT: Gentlemen, first as to the plaintiff, you have heard all of the terms of the settlement as expressed on the record, have you, Mr. Carleton?

THE WITNESS: I have, your Honor.

THE COURT: Is there anything that you wish to call to the Court's attention in connection with it?

THE WITNESS: I fail to see how soon the architects will come up with the \$25,000.

THE COURT: The understanding in that respect not having been expressed in that it should be within a reasonable time and I suppose that within the course of the next week they ought to issue their check.

Is that satisfactory?

MR. LAKE: As soon as possible, your Honor. They are in Texas.

MR. GARBARINI: In view of the time, I would suggest,

Carleton

if I may, that it be in by the end of the year, this being the 10th already and with holidays in between. They are not getting the papers, in any event, until they do.

THE COURT: The understanding will be that that check is due within a reasonable time and that should be within the next week or two.

MR. LAKE: As soon as possible.

THE COURT: Give or take a day or so.

Is that satisfactory?

THE WITNESS: Yes.

THE COURT: Now, having heard all of the terms of the disposition of this matter as expressed on the record and understanding those terms, are you, Mr. Carleton, the plaintiff in this case, satisfied therewith and approve the same in all respects?

THE WITNESS: Yes.

THE COURT: Is the settlement approved in all respects on behalf of Mr. Carleton's attorney, Mr. Garbarini?

MR. GARBARINI: Yes, it is, your Honor.

THE COURT: Is the settlement approved in all respects on the part of the school district by Mr. Moses?

MR. MOSES: Yes, your Honor.

THE COURT: Is the settlement approved in all respects on behalf of Caudill, Rowlett and Scott by Mr. Lake?

Carleton

MR. LAKE: It is, provided that the releases to Caudill, Rowlett and Scott are made jointly and individually for all members of the partnership.

THE COURT: That form of release is acceptable to everybody, as I understand it?

MR. GARBARINI: Yes.

THE COURT: Now, the terms of the settlement, as you heard them expressed, Mr. McNeill, in court, insofar as they relate to your company, the Firemen's Insurance Company of Newark, New Jersey, are satisfactory and accepted?

MR. McNEILL: Very much so.

THE COURT: Accordingly the Court will mark this case on its calendar as follows:

The action is settled and discontinued without costs to any party as against any other party.

In respect of the individual defendants George W.

Renc, Lee N. Starker, Edward C. Manning, Walter Reiner and

Richard Stobaeus, the action is dismissed on the merits with

prejudice and without costs.

The settlement having been accepted by all parties now constitutes the remaining obligation of the parties in respect of this lawsuit.

So ordered.

MR. GARBARINI: Let the record show that counsel

Carleton

for the plaintiff, speaking also on behalf of the other counsel in the case and plaintiff in person, express our appreciation for the really untiring efforts exerted by the Court in connection with this settlement, and it would not have been possible to bring this about except by his Honor having extended himself above and beyond the call of duty and I sincerely mean that.

MR. MOSES: I think we should add that the taxpayers of the School District should be deemed appreciative
of the Judge's skill and patience in handling this matter
and bringing it to a disposition to the benefit of all parties.

THE COURT: Thank you, gentlemen.

That concludes the proceedings for today.

MR. GARBARINI: Thank you very much, Judge.

(Time noted: 10:55 a.m.)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ROBERT A. W. CARLETON, JR., doing business as CARLETON BROTHERS COMPANY,

Plaintiff

-against-

Index No. 64 Civil

UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER, RICHARD STOBAEUS, and CAUDILL, ROWLETT and SCOTT,

Defendants.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the same hereby is settled and discontinued, with prejudice, without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.

Dated: New York, New York December 19, 1969

/s/GARBARINI, SCHER, DE CICCO & BERARDINO
GARBARINI, SCHER, DE CICCO & BERARDINO
Attorneys for Plaintiff
500 Fifth Avenue
New York, New York 10036

/s/ BERNSTEIN, WEISS, HAMMER & PARTER
BERNSTEIN, WEISS, HAMMER & PARTER
Attorneys for Defendants
CAUDILL, ROWLETT & SCOTT
120 East 41st Street
New York, New York 10017

/s/ LEXOW & JENKINS
LEXOW & JENKINS,
Attorneys for other defendants
55 Park Place
New York, New York

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, Greeting: KNOW YE, that I, ROBERT A. W. CARLETON, JR., being over the age of 21 years and residing at 1078 Anderson Avenue, Palisade, New Jersey, for and in consideration of the sum of Twenty Five Thousand dollars (\$25,000.00) lawful money of the United States of America to me in hand paid by CAUDILL, ROWLETT, & SCOTT, a co-partnership, and each and every partner thereof, individually, its and their heirs, executors, administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trepasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against CAUDILL, ROWLETT & SCOTT, a co-partnership, and each and every partner thereof, individually, I ever had, now have or which I or my heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 10th day of December 1969.

Sealed and delivered in the presence of

/s/ ROBERT A. W. CARLETON, JR. L.S.

Robert A. W. Carleton, Jr.

State of New York County of New York ss.:

On the 10th day of December 1969 before me personally came

Robert A. W. Carleton, Jr.

to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same

/s/ CHAS. J. GARBARINI

CHAS. J. GARBARINI Notary Public, State of New York No. 60-1370850 Qualified in Westchester County Term Expires March 30, 1971 Carleton v. Union Free School Dist. No. 8, et al. 64 Civ.3498

Endorsement

Plaintiff, the prime contractor for the construction of a new high school by the defendant School District, seeks to amend its complaint to assert a claim against the defendant Caudill, Rowlett & Scott, who had entered into a written contract with the School District for the performance of architectural services and other duties related to the construction of the school.

The proffered fourth count is grounded on an allegation that performance by the architects of their contract with the School District "inured to the benefit of plaintiff." This bald conclusion is neither supported by any allegations of fact, nor by reference to the contract which is not even annexed to the complaint. This is not surprising, for the most cursory reading of the contract, submitted in the papers opposing the motion, shows that it is the usual contract between an owner and an architect and contains absolutely nothing in the nature of an express or inferential promise by the architect to render any performance for the benefit of plaintiff or any other third person. Thus, the amended complaint fails

to allege any facts showing that there is any promise in the agreement which was intended for plaintiff's direct benefit. Fairly read, all that is alleged is that plaintiff is an incidental beneficiary of the contract, and an incidental third party beneficiary may not sue upon the contract of others. Rey v. Penn Shipping Co., 277 F.2d 905, 907 (2d Cir. 1960); Johnson Farm Equip. Co. v. Cook, 230 F.2d 119, 124 (8th Cir. 1956); Pennsylvania Steel Co. v. New York City Ry., 198 Fed. 721, 749 (2d Cir. 1912); Restatement, Contracts, Section 147; 2 Williston, Contracts, Section 356 (3d ed.).

Since it is clear that the fourth count of the proposed amended complaint fails to allege a claim upon which relief can be granted, we find it unnecessary to discuss defendant's other contentions.

Accordingly, plaintiff's motion for leave to serve an amended complaint is in all respects denied.

So ordered.

Dated: New York, N. Y. October 27, 1966

/s/ Floyd F. Mac Mahon
U. S. D. J.

ENDORSEMENT ON DEFENDANT CAUDILL, ROWLETT AND SCOTT'S MOTION FOR SUMMARY JUDGMENT

The within motion for summary judgment must be granted. The present action seeks to reopen the earler action (64-CIV-3498) which was settled before Judge Pollack and a general release delivered by plaintiff to movants. No sufficient reason is given for reopening the earler action and in any event an independent action is not available for any such relief. A motion in the earlier action under Fed. R. CIV P. 60(b) did appear to have been the only available procedure.

The Clerk is directed to enter judgment in favor of defendants CAUDILL, ROWLETT & SCOTT dismissing the action as to them. There is an express determination that there is no just reason for delay and there is an express direction for the entry of judgment (Fed. R.CIV P. 54(b)).

/S/ INZER B. WYATT U.S.D.J.

April 5, 1974.

MOTION OF REMAINING DEFENDANTS FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted]

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of Matthew F. Sarnell, Esq., sworn to on the 19th day of March, 1974, and the exhibits attached thereto, the undersigned will move this Court upon oral argument at a Term for motions to be held before Hon. Izner B. Wyatt, at the Federal District Court House, Foley Square, New York, Room 1106, on the 5th day of April, 1974, at 2:30 o'clock in the afternoon for an order:

- Pursuant to Rule 12 FRCP dismissing the complaint for failure to state a claim upon which relief can be granted.
- 2. Pursuant to Rule 12 FRCP dismissing the complaint upon the ground of lack of jurisdiction of the subject matter of this action.
- 3. Pursuant to Rule 12 FRCP dismissing the complaint on the ground that the plaintiff is collaterally estopped from prosecuting this action further.
- 4. Pursuant to Rule 12 FRCP dismissing the complaint on the ground that the plaintiff is barred from further prosecuting this action insofar as the issues herein are res judicata.

MOTION OF REMAINING DEFENDANTS FOR SUMMARY JUDGMENT

- 5. Pursuant to Rule 12 FRCP dismissing the complaint on the ground that the plaintiff is barred from further prosecuting this action by reason of the bar of the Statute of Limitations; release; and payment.
- 6. Pursuant to Rule 19 FRCP dismissing the complaint on the ground that plaintiff has failed to join parties who should be made parties to this action.
- 7. Pursuant to Rule 56 FRCP for summary judgment in favor of the defendants represented by the undersigned against the plaintiff.

Defendants' memorandum in support of these motions is served with this Notice of Motion.

DATED: New York, New York March 19, 1974

Yours, etc.

AMEND & AMEND
Attorneys for Defendants
Union Free School District
No. 8, Town of Orangetown,
Rockland County, New York,
George W. Renc, Lee N.
Starker, Edward C. Manning,
Walter Reiner, Richard
Stobaeus.
Office & P. O. Address
40 Wall Street
New York, New York 10005
Tel.: (212) 425-4230

TO: ROBERT A. W. CARLETON, JR. Plaintiff, Pro Se 1078 Anderson Avenue Palisade, New Jersey

Clerk of the Court United States District Court Southern District of New York U. S. District Court House FoleySquare New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

4	
[Caption	Omitted]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MATTHEW F. SARNELL, being duly sworn deposes and says:

1. Deponent is an associate of Amend & Amend, Esqs., attorneys for defendants, Union Free School District No. 8, Town of Orangetown, Rockland County, New York, George W. Renc, Lee N. Starker, (in point of fact the Estate of Lee N. Starker, deceased), Edward C. Manning, Walter Reiner, and Richard Stobaeus (hereinafter referred to collectively as the "defendants") in this action and makes this affidavit in support of this instant application, pursuant to Rule 12 FRCP to dismiss the complaint herein as to these defendants on the grounds the plaintiff fails to state a claim upon which relief can be granted, and further that this Court lacks jurisdiction of this action; and upon the other grounds set forth in the Notice of Motion annexed hereto for a dismissal of the complaint pursuant to Rule 12 FRCP: pursuant to Rule 56 FRCP for summary judgment in favor of defendants against the plaintiff; and pursuant to Rule 19 FRCP dismissing the complaint on the ground plaintiff has failed to join parties who are indispensable to this

action. Deponent's knowledge where not actual personal knowledge, is based upon a review of the records and documents relating to the prior actions between the parties. Upon the return of this motion, the prior record files of this Court will be requisitioned to be considered in connection with this instant application, and to the extent referred to, shall be deemed incorporated by reference herein.

2. Deponent respectfully submits that plaintiff's instant action is the third attempt by the plaintiff to litigate a dispute which arose almost ten years prior to the commencement of the present action, and was presumed to have been dispensed with in the first of such actions which was discontinued with prejudice in 1969.

The individual defendants for whom deponent's firm is appearing are former members of the Board of the defendant Union Free School
District No. 8, County of Rockland, State of New York. The said individual
defendants were members thereof, at the time the original controversy herein
purportedly arose.

3. Deponent states that a reading of plaintiff's complaint
(Exhibit "A" annexed hereto) clearly supports defendants' contention that
the complaint must be dismissed as a matter of law and fact; as deponent
will hereinafter demonstrate.

Initially, the essential allegations of plaintiff's complaint are as follows:

(a) On or about August 9, 1960 plaintiff entered into a contract with the defendant Union Free School District wherein plaintiff

was to be the general contractor in connection with the construction of a high school. (\$\mathbb{7}4\$ of the complaint).

- (b) The defendant breached the contract with the plaintiff (76 and 713 of the complaint).
- (c) During the calendar year 1964 plaintiff commenced an action in the United States District Court for the Southern District of New York, predicated upon the facts set forth in subparagraphs "a" and "b" above, Index Number 64-CIV-3498, said action be assigned to Honorable Milton Pollack, a Judge of this Court (#19 of the complaint).
- (d) On December 10, 1969 a final order dismissing the complaint on the merits, with prejudice, settling and discontinuing said action against the defendants herein was entered and such order is still in full force and effect (\$\mathbb{P}21\$ of the complaint). The aforesaid settlement was based upon a verbal stipulation upon the record by and between counsel for all parties in the presence and after hearing from plaintiff. (\$\mathbb{P}22\$ of the complaint); and that pursuant to said stipulation plaintiff issued general releases in favor of the defendants herein and the other defendants in that action (\$\mathbb{P}23\$ of the complaint). (Exhibit "B" annexed hereto is a copy of the Stenographic record of that hearing on May 10, 1969).
- (e) Plaintiff alleges that the aforesaid stipulation hereinabove referred to was a result of fraud and mistake, and was without consideration (#24 of the complaint).
- (f) Plaintiff seeks to rescind the settlement hereinabove referred to and continue with the prior litigation; index number 64-CIV-3968.

- 4. Deponent respectfully submits that certain additional facts when considered with the foregoing clearly reflect that a dismissal of this action must be granted, to wit:
- (a) At all times mentioned and pertinent hereto the defendant, Richard Stobaeus is a resident of the State of New Jersey; as the Marshall's return clearly indicates.
- (b) As part of the settlement hereinabove referred to the bonding company which bonded plaintiff's performance of the construction contract eluded to by plaintiff, in consideration of the general releases exchanged, released to plaintiff and his mother certain real property which plaintiff had placed with said bonding company as collateral, and in addition plaintiff received further consideration (See Exhibit "B" annexed).
- (c) In 1973, plaintiff instituted a similar action to the present action for the apparent purpose of setting aside the settlement of the 1964 action, index No. 73-CIV-1946 in this Court, which was dismissed upon motion by order of Honorable Marvin E. Frankel, Judge of this Court.
- 5. Deponent states that insofar as plaintiff is a resident of the State of New Jersey and the defendant, Richard Stobaeus is a resident of the State of New Jersey, this action must be dismissed by reason of lack of subject matter jurisdiction, there being no federal question involved, and/or alleged and further a lack of diversity of the parties.
- 6. Deponent respectfully submits that plaintiff's complaint should be dismissed for failure to state a claim upon which relief can be granted insofar as plaintiff seeks to rescind a Court supervised and

approved settlement without alleging or setting forth any extrinsic fraud or mistake. Plaintiff's bare allegations of fraud and mistake are insufficient as a matter of law. In addition, a reading of the minutes of hearing before Honorable Judge Pollack, (Exhibit "B" annexed) clearly demonstrates that plaintiff was duly represented by counsel; that the Court took great care in assuring plaintiff's complete understanding of the settlement; that plaintiff did in fact receive consideration and value in exchange for the releases which were a part thereof.

- 7. Deponent states as further grounds for dismissal that the action herein is barred as a result of the stipulation discontinuing the action with prejudice, all issues being present in the prior action being deemed res judicata as to the plaintiff's claim herein; that based upon the aforesaid stipulation discontinuing the prior action with prejudice, plaintiff is collaterally estopped from rescinding the releases, etc., without an affirmative showing of extrinsic fraud (which as a matter of fact upon the record plaintiff cannot establish); that the action is barred based upon the release and payment in the prior action which plaintiff fails to demonstrate were a result of extrinsic fraud; and finally the plaintiff's action is barred by laches and the Statute of Limitation with respect to setting aside or vacating judgments and/or orders of this Court pursuant to Rule 60(b) FRCP.
- 8. Finally, deponent respectfully submits that this action should be dismissed for failure to join indespensable parties, to wit: those parties which were parties to the action, specifically the plaintiff's surety

company (see Exhibit "B" annexed), by reason of the execution of releases which were exchanged between the parties therein. Without their joinder a complete relief cannot be granted in this action.

- 9. Deponent further submits that plaintiff should once and for all be estopped from further burdening this Court and the defendants herein, with these continuous attempts to re-hash and re-try a matter which was duly disposed of by this Court almost five years ago. Plaintiff's actions, are shortly coming to an abuse of process, whereby the defendants have been put to the burden of incurring attorneys fees and expenses in connection with the prior action before Honorable Judge Frankel and will incur additional expenses in the defense of this action.
- 10. By reason of the foregoing it is equally apparent that defendants are entitled to summary judgment in their favor and against the plaintiff based upon the prior proceedings herein.
- 11. None of the defendants are in default in pleading or answering the complaint, nor has any previous application for the relief herein prayed for has been made.

WHEREFORE, deponent respectfully prays for an order dismissing the complaint herein and the entry of summary judgment in favor of defendants and against plaintiff, together with motion costs, and that the

Court grant such other and further relief as the interest of justice and the dignity of this Court require.

/s/ Matthew F. Sarnell Matthew F. Sarnell

Sworn to before me this 19th day of March, 1974.

/s/ Raymond A. Keeney
RAYMOND A. KEENEY
Notary Public, State of New York
No. 31-7202005
Qualified in New York County
Commission Expires March 30, 1976.

(Reprinted herein at Page 18 for the Summons in this action and Pages 1 through 10 inclusive for the Complaint in this action)

(Reprinted herein at Pages 28 through 48 inclusive)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted]

STATE OF NEW YORK)
CITY OF NEW YORK : ss.:
COUNTY OF NEW YORK)

ROBERT A. W. CARLETON, JR., being duly sworn, according to law, deposes and says:

1. That I am the plaintiff, appearing pro se, in the aboveentitled action and with personal knowledge of the facts and circumstances
hereinafter set forth, make this combined affidavit and memorandum of law
in opposition to motions brought on behalf of all of the defendants herein,
for judgment dismissing the complaint.

STATEMENT

2. This is an action by ROBERT A. W. CARLETON, JR., doing business as CARLETON BROTHERS CO., ("Carleton"), against UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, ("School District"), GEORGE W. RENC ("Renc"), LEE N. STARKER ("Starker"),

EDWARD C. MANNING ("Manning"), WALTER REINER ("Reiner"), RICHARD STOBAEUS ("Stobaeus) and CAUDILL, ROWLETT & SCOTT ("Caudill") for relief from an order entered on December 10, 1969, in the United States District Court for the Southern District of New York in an action entitled ROBERT A. W. CARLETON, JR., d/b/a CARLETON BROTHERS CO. v. the same defendants to this action, bearing Index No. 64-CIV-3498 (hereinafter called "the Prior Action") and for the rescission of the stipulation thereto and rescission of certain general releases executed contemporaneously therewith. Carleton alleges here that he was forced to consent to the said stipulation as a result of duress, threats, pressure, extortion and overbearing on the part of the defendants, that there was an inadequacy of consideration, and other grounds applied to the execution of the general releases signed contemporaneously with the said stipulation. As a result of the said actions of the defendants, resulting in the order discontinuing the prior litigation, Carleton now seeks relief from the said order of discontinuance as well as the rescission of the stipulation upon which it was based and the general releases executed contemporaneously therewith.

3. The defendants now move this Court for judgment dismissing the complaint, pursuant to Rules 12, 19 and 56 of the Federal Rules of Civil Procedure, upon the grounds that there is a failure to state a cause of action upon which relief can be granted, that the Court lacks subject

matter jurisdiction, that the cause of action is barred by the doctrine of Collateral Estoppel, that the cause of action is barred by the doctrine of res judicata, that the cause of action is barred by the Statute of Limitations, that the cause of action is barred by releases, that the cause of action is barred by payment, that the plaintiff has failed to join necessary parties, and that there is no factual issue left for trial. It is to this omnibus group of motions that this combined affidavit and memorandum is addressed.

SUMMARY OF THE COMPLAINT

- 4. The complaint indicates that the prior litigation was at a point whereat a stipulation was entered into between counsel for all parties settling the action upon stated terms and conditions and that, predicated upon said stipulation, an order was issued discontinuing the action.

 Subsequent to the entry of said order, and pursuant thereto, certain general releases were executed and exchanged.
- 5. Carleton alleges that these actions terminating the prior litigation inclusive of the stipulation of settlement and execution of general releases, was entered into by him while he was in a state of diminished mental capacity as a direct result of duress, threats, pressure, extortion and overbearing on the part of the defendants, without adequate

consideration, and upon other grounds.

- 6. Predicated upon such strong allegations, Carleton seeks rescission of the stipulation, rescission of the general releases, and relief from the order discontinuing the prior litigation.
- 7. Should the relief requested in this litigation be granted, all that Carleton will have gained will be his right to have his day in court in regard to the complaint set forth in the prior litigation, and no more.

FACTS

- 8. In 1964, Carleton commenced an action against the defendants herein. In the course of the said litigation, plaintiff discontinued the action as against defendants Renc, Starker and Reiner and certain facts were stipulated by all parties hereto, to wit:
- (1) A contract was entered into on August 9, 1960, for the construction of school buildings as set forth in certain contract documents.
- (2) Defendant School District entered into the contract for the construction of the said school with certain named prime contractors.

 The said School District also entered into a contract with defendant Caudill

for architectural services in respect to construction of the said school.

- (3) The agreed price to be paid to the plaintiff for the said construction was \$1,812,425.00. However, plaintiff contended that the agreed price did not include claims for change orders and delays.
- 9. Plaintiff contended that as a result of certain delays and change orders not covered by the contract, as well as inadequate and improper supervision by the architect, he was entitled to damages in the sum of \$6,789,197.42.
- 10. A more detailed explanation of the pleadings and issues of the prior litigation may be found in the pre-trial order entered therein, a copy of which is annexed hereto and made a part hereof as Exhibit A.
- 11. On December 10, 1969, the case came on to be heard before the Hon. Milton Pollack, a Judge of this Court, and at said time a stipulation of settlement was executed by the parties, which stipulation was incorporated into a transcript, a copy of which has been annexed to and made a part of defendant's moving papers. Predicated upon the said stipulation, Judge Pollack entered an order disposing of the case.
- 12. As included in the stipulation and order, certain general releases were thereafter executed. A copy of the written stipulation and a copy of certain of the general releases are also included in defendants'

moving papers.

- 13. At the time when these vital transactions took place, plaintiff, an elderly bachelor was residing with his mother who was quite infirmed and who subsequently died. Plaintiff was in a state of diminished mental capacity and severe emotional distress as a result of various creditors hounding him for money predicated upon finding himself in debt as a result of defendants' failure to pay the claim set forth in the prior litigation.
- 14. Even though defendants failed to pay the claim set forth in the prior litigation, as a result of their increasing plaintiff's expense in the construction of the subject school, plaintiff went into severe debt for the purpose of obtaining the money to properly complete the school construction and to maintain his reputation in the community. Of the debts pressing against the plaintiff at that time, over \$1,000,000.00 was involved and the plaintiff was unable to obtain forebearances.
- when the prior litigation was settled, plaintiff was under immediate threat by the Continental Insurance Companies, specifically their affiliate, the Firemen's Insurance Company of Newark, New Jersey, that if monies due to it, in the sum of \$426,288.58 were not immediately paid to it, dire repercussions would be inflicted upon the plaintiff, including but not limited to foreclosure

on certain real property owned by him and his infirmed mother, and liquidation of certain securities also jointly owned by plaintiff and his mother.

- 16. The insurance company had notified plaintiff's mother, who was compelled to be by his mother's side day and night in order to attend to her illness, was subjected to the pleas and pleadings of his infirmed mother to extricate her from a situation not of her own making. A copy of a demand letter from the Continental Insurance Company dated May 9, 1969, is annexed hereto and made a part hereof as Exhibit B.
- 17. At this same time, plaintiff was threatened by counsel for the defendants, that even should plaintiff prevail in the instant litigation, appeals would tie the case up in the courts "forever" and that there would be little hope of plaintiff's recouping monies with which to satisfy any of his pressing creditors. The duress, threats, pressure, extortion and overbearing on the part of the defendants, directly and through their counsel, resulted in plaintiff feeling compelled at a time of diminished mental capacity, to take an inadequate consideration, sufficient only to remove the impending threat of foreclosure on his mother's property and permit his mother to live out her remaining days free of the constant aggravation caused by the threat of the foreclosure of her property.
- 18. Immediately after the execution of the stipulation terminating the prior litigation, the entry of the order predicated thereon,

and the exchange of general releases, in early 1970, and at numerous times thereafter, plaintiff notified the defendants, in his then erratic fashion, of his desire to rescind the releases and stipulation and reopen the case. When such efforts proved unavailing, plaintiff, unable to afford legal assistance, sought help from every possible direction including direct and protracted correspondence with Judge Pollack, United States Senator Clifford Case of New Jersey, and even United States Supreme Court Chief Justice Warren Berger. Obviously, these were not the proper procedure to rectify the wrong theretofore inflicted upon plaintiff.

States District Court Judge Murray I. Gurfein, who responded to plaintiff in a letter dated June 20, 1972, indicating that he (Judge Gurfein) had made an independent inquiry resulting in his discovery that the prior litigation had terminated and was not presently before the court and that should plaintiff wish to commence an action based upon the allegations which plaintiff had presented time and time again to all who would listen, Judge Gurfein recommended that plaintiff contact either an attorney in the proper procedure. A copy of Judge Gurfein's letter is annexed hereto and made a part hereof as Exhibit C.

- 20. Thereafter, plaintiff sought the assistance of counsel through countless law firms and private attorneys, and was unable to obtain the assistance of counsel because of a failure to produce an adequate retainer.
- 21. Finally, and in desperation, plaintiff did in fact take Judge Gurfein's advice and visited the pro se Clerk of this Court who advised plaintiff as to the procedure for commencing an action. Without the advice of counsel, plaintiff commenced an action in this Court filed under Index No. 73-CIV-1946 against all of the defendants in the original action, their attorneys, and even Judge Milton Pollack. Unfortunately, the complaint was substantially the same as the prior complaint and was dismissed on grounds of res judicata.
- 22, Feeling aggrieved by the dismissal of his pro se action, in January of 1974 plaintiff consulted the Bergen County Bar Association in Hackensack, New Jersey, seeking referral to an attorney competent to handle the appeal from the dismissal of plaintiff's pro se action (hereinafter referred to as "first collateral attack"). The Bergen County Bar Association did in fact refer plaintiff to a New Jersey attorney located in Paterson, New Jersey, who, in turn, referred plaintiff to New York counsel. A payment to New York counsel for advice exhausted plaintiff's remaining

financial resources and resulted in recommendation not to appeal from a dismissal of the first collateral attack, but to commence an independent action seeking relief from the order disposing of the prior litigation and rescission of the stipulation upon which the order was based and rescission of the general releases executed contemporaneously therewith.

23. Unfortunately, plaintiff has been unable to afford to retain counsel to commence an independent collateral attack seeking relief from the order disposing of the prior litigation, etc. and accordingly has commenced this action pro se. However, in formulating his complaint in this independent action, plaintiff has succinctly stated a valid cause of action for relief from an order of this Court and for rescission of certain documents upon which a fair judgment may be entered.

SUMMARY OF PLAINTIFF'S CONTENTIONS

- 24. Plaintiff contends that defendants' motions for judgment dismissing the complaint are totally without merit. There can be no doubt that plaintiff has stated a cause of action upon which relief can be granted and plaintiff further contends that there is no other way in which relief of this nature may be sought at this time.
- 25. Defendants' assertion that this Court lacks jurisdiction is ludicrous because no other court, save for an applellate court, can

offer relief from an order entered in this Court.

- 26. The doctrines of collateral estoppel and res judicata are equally ludicrous as defenses to the causes of action set forth in the complaint because defendants assert the very items sought to be rescinded as collaterally estopping and determining this action. Only a subsequent position taken by the plaintiff or judgment of reaffirming the order of the court would operate as affirmative defenses. As to the affirmative defenses of the Statute of Limitations, all of the defendants' references are to Rule 60 of the Federal Rules of Civil Procedure and there is a 6-year statute of limitations for an independent suit for the same relief.
- 27. The affirmative defense of pleading release as a bar to a suit to rescind that release is not deserving of further comment.
- 28. Likewise, payment may not be asserted as an affirmative defense because the sum settled for was not the sum sued for and only amounts to 7 cents on the dollar. Defense counsel erred in his argument because he should have pleaded accord and satisfaction and even if he had done so this suit seeks the rescission of that accord and satisfaction.
- 29. As to defendants' assertion that the complaint must be dismissed because of a failure to join necessary parties, it is respect-

fully asserted that joinder of interested parties cannot be compelled in this action because the bonding company sought to be joined herein by the defendants was not a party to the original action. The fact that monies were paid on account of the plaintiff herein to the bonding company, or for that matter anyone else, does not make those recipients of money paid on account of the plaintiff necessary parties to this action.

- 30. Assuming arguendo, if the bonding company were to be joined it should be alligned according to its real interest in the controversy, which would require treating the bonding company as a party plaintiff for the purpose of determining any additional money which might be owed to it. If defendants' reasoning were held to be valid, plaintiff's prior attorneys, who received money on account of the plaintiff in the prior action, should also be joined as necessary parties. However, such reasoning is erroneous because in determining whether to dismiss this action for the non-joinder of indispensible parties, this Court must adhere to the guidelines set down in Rule 19(b) of the Federal Rules of Civil Procedure which permits a Federal court to proceed in the absence of otherwise indispensible parties if "equity and good conscience" permit.
- 31. Should plaintiff prevail in this action without the presence of the bonding company, the bonding company's rights would in no way be prejudiced as they could either join in ghe prior litigation, or sue for

AFFIDAVIT OF ROBERT A. W. CARLETON, JR. SWORN TO APRIL 5, 1973

additional monies. While it is true that should plaintiff prevail in this action, defendants may be collaterally estopped in an independent action brought on behalf of the bonding company, no prejudice would accrue to the bonding company should it desire to institute a separate proceeding, because determination herein would be considered res judicata against it. In other words, while an adjudication against plaintiff would not preclude any rights of the bonding company, an adjudication in favor of the plaintiff might be available to them by way of collateral estoppel.

- 32. The question of requesting summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, upon the grounds that there are no triable issues of fact, predicated by the assertions made in the complaint herein, literally interpreted in favor of the plaintiff for the purpose of this motion, is unbelievable because if each and every fact alleged by the plaintiff is proven to be true, not only is the plaintiff entitled to the judgment sought, but the Bar Association would take a serious interest in the events which led to the curtailment of plaintiff's rights.
- 33. When fraud is asserted against an attorney, it is respectfully submitted that the court has an inherent obligation to investigate
 those charges and to either sustain them, if they are true, or dispel them,
 if they are false.
 - 34. Equity and good conscience, as well as the well established

case law require that the defendants' motion be denied in all respects as being frivolous.

ARGUMENT

The power of equity to grant relief against judgments the enforcement of which would be unconscionable is of long standing (Hazel-Atlas Glass Co. v. Hartford Empire, 321 U.S. 328).

As originally adopted, F.R.C.P. Rule 60, generally governing the subject of relief against judgments, did not purport to impair recourse to an "action" for such relief (Oliver v. City of Schattuck, 157 F2d 150), and amend Rule 60(b) provides that it does not limit the power of the Court to entertain "an independent action" to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud.

Case law has long held that with the merger of law, equity and admiralty, and with the general abolition of procedural distinction, it is almost always the same Court which rendered a judgment which is the most appropriate one to apply to for "equitable" relief. Any other Court, if applied to, will always totally defer to the original Court on the principle of Comity (Lapin v. Shutton, Inc., 333 F2d 169) resulting in the rule that an application for equity relief now must be made to the Court which rendered the judgment thus collaterally attacked. (Hartford Empire Co. v.

Hazel-Atlas Glass Co., 125 F2d 976). When an independent action to relieve a party from a judgment or order is brought in the Federal Court that rendered the initial judgment there is anceillary jurisdiction over the action despite the absence of a Federal question of diversity of citizenship (Martina Theatre Corp. v. Schine Chain Theatres, Inc. 278 F2d) by reason of the fact that the application is now commonly to the same Court which rendered the judgment, and because of the general disregard of technical refinements, if a situation within the recognized scope of the precedents and calling for relief in good consciences is presented, whether by Motion, Petition, or the general commencement of a new action, the Court will not be too concerned about the form or method of its presentation (Dumlevy v. Dunlevy, 38 F 459, American Inc. Co. v. Lucas, 38 F Supp. 926, affirmed 129 F2d 143). The proper parties to an application for equity relief are only those who were parties to the original judgment (Hanna v. Brictson Manuf. Co., 62 F2d 139).

The limitation as to the time for Motion provided in amended Rule 60(b) is inapplicable to an independent action for relief, since it is stated in the Rule; that "this Rule does not limit the power of the Court to entertain an independent action," etc. (in re: <u>Casco Chemical Co.</u>, 335 F2d 645). A judgment's freedom from fraud is always a proper subject

of judicial inquiry. A Federal District Court has inherent power in the exercise of inherent judicial discretion to vacate a judgment obtained through fraud or connivance, and such power is strengthened by Rule 60(b) which expressly provides that it does not limit the power of a Court to entertain an independent action for relief from a judgment, order or proceeding, or to set aside a judgment.

Laches is not evident in the present case because Carleton has made numerous applications by letter to the Court commencing immediately after the entry of the order sought to be vacated until the date hereof.

Carleton's prior independent action, although poorly pleaded, evidences his continuous desire to have his day in Court.

The facts submitted by Carleton in opposition to defendants' application, clearly show a diminished mental capacity, inadequacy of consideration, fraud, and duress. Accordingly, a prima facie ground for cancellation or rescission is inadequacy of consideration. It has been held that the want of any consideration, or the shocking inadequacy of consideration justifies equity acting in the administration of justice to prevent an unconscionable result, in a proceeding to rescind or cancel a document (Roux v. Rothchild, 37 Misc. 435, 75 NYS 763) Aff. 78 AD637, 79 NY Sup. 1145.

Inasmuch as the releases and stipulation were executed as a part of a Federal court proceeding, intermingled inextricably with the order sought to be vacated, the subject matter of rescission must be treated simultaneous with the subject matter of relief from the order.

The affirmative defenses presented by the defendants are not worthy of comment other than that contended in the summary of the argument above.

CONCLUSION

A complaint seeking the relief sought upon the grounds presented should not, in equity and in good conscience, be summarily dismissed.

/s/ Robert A. W. Carleton, Jr.
ROBERT A. W. CARLETON, JR.

Sworn to before me this

5th day of April, 1974

STEVEN R. SAUER

Notary Public, State of New York

No. 3 440

Qualified in New York County

Commission Expires March 30, 1975

EXHIBIT A ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 5, 1974 IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT' SOUTHERN DISTRICT OF NEW YORK

- X

ROBERT A. W. CARLETON, JR., d/b/a CARLETON BROTHERS COMPANY,

Plaintiff.

-against-

PRE-TRIAL ORDER

Docket No. 64-Civ-3498

Cal. No. 116 (2)

UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YROK, GEORGE W. RENC, LEE N. STARKER, EDWARD C. MANNING, WALTER REINER, RICHARD STOBAEUS and CAUDILL, ROWLETT & SCOTT,

Defendants.

. - - - - - - - X

On December 11, 1967, the parties to this action, or their attorneys, appeared before the Court at a pre-trial conference pursuant to local Calendar Rules 6 and 13 and Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken.

1. No amendment was made to the pleadings, except that

the plaintiff discontinued the action as against the defendants, Geroge W. Renc, Lee N. Starker, and Walter Reiner.

- 2. The parties agreed that the trial of this action should be based upon this order and upon the pleadings as amended, except that the following issues raised by the pleadings are expressly abandoned: NONE.
- 3. A. The parties stipulated that the following facts are not in dispute in this action:
- (1) The contract was entered into on August 9, 1960, for the construction of school buildings as set forth in the contract documents.
- (2) The defendant Union Free School District No. 8 also entered into contracts for construction of said school with the prime contractors, Charles W. Ackerman, Inc., Mehl Electric Co., Inc. and Thomas J. Kempston, Jr., Inc. The said defendant School District also entered into a contract with the defendant Caudill, Rowlett & Scott for architectural services in respect to construction of such school.

(3) The agreed price to be paid to the plaintiff, is as follows:

Contract Price	\$1,770,065.00
Running Track	30,000.00
Tennis Courts	12,360.00
	\$1,812,425.00

Plaintiff contends, however, that said agreed price does not include claims for change orders and delays.

- 3. B. It is plaintiff's contention that:
- (1) The construction costs to the plaintiff of the contract project including his claim for delays and other expenses was as follows:

Plaintiff's construction cost	\$2,874.278.00
Defendant's School District disbursements	68,508.00
Disbursements by Bonding Company	393,045.00
Total Construction Cost	\$ 3,335,831.00
Less Payments made by Defendant School District	1,868,192.00
Net Loss Occasioned by the Acts and Omi sions of the Defendant as follows	\$ 1,467,639.00

a. Delays in preparation of the School cite and construction, estimated to cost the plaintiff the following:

Stand-by help & supervision for the period 8/16/60 to 9/16/60, pending site work preparation \$ 1,903.53 Additional Labor from Contract date to October 30, 1962 pending construction of East Central Avenue approach elevations; for assistant superintendent and transit man - 104 weeks at \$475.96 per week

\$ 49,499.84

Estimated Delays in construction of the buildings commencing on or about August 30, 1960, due to run-off waters and muddy conditions causing additional labor charges of approximately

401,058.35

Additional delays for the period 8/16/60 to 6/1/61 occasioned by the defendant's failure to approve sub-contractors and manufacturers plans causing additional labor charges of approximately

158,502.59

For delays by the heating contractor, the defendant School District, and the defendant, Caudill, Rowlett & Scott, in failing to approve the heating contractors' equipment for a period of eight months; and additional delays for failure to compel the installation of such equipment, c using additional labor and overhead in the sum of

40,428.18

Additional plumbing expenses caused by the Clerk of the Works interference with the installation of utility service

821.14

For delays because of the defendant's failure to approve chalk board for installation for the period July 2, 1962 to March 11, 1963 causing

additional labor	and	related	costs
amounting to			

\$ 23,663.46

Estimated delay caused by the interference of the Clerk of the Works creating jurisdictional disputes between carpenters and metal lathers union resulting in a delay of performance of work from November, 1961 to October, 1962 at an estimated cost of

14,249.88

Additional delays caused by the failure of the defendants to provide roof drawings indicating location of ventilating pipes, drainage pipes and sky lights at an estimated cost for wages and overhead of \$63,759.49

Overhead 22,379.55

86,138.95

(b) Additional materials and other costs

incurred by the plaintiff:

Survey costs required to stake out the construction site	\$ 336.60
Material and labor costs incurred	
in providing an access road	4,641.00
For re-workment and development	
of the track and tennis courts	16,450.00
Cutting pre-cast roof units in order to accommodate openings	
for plumbing and heating pipes	599.84
Stand-by costs for supervision of	
labor and labor during the period	
September, 1960 to November, 1962	
and for re-development, re-seeding	
and regrading the cite playing	
field estimated labor and materials	69,492.60

Additional costs for snow removal, removal of equipment and temporary winter enclosure and fuel	\$ 4,149.20
Extra costs incurred because of action of the Clerk of the Works in preventing plaintiff's employees from stripping concrete forms as directed by plaintiff, causing a delay for the period February 2, 1961 to November 30, 1961 and additional masonry expenses in the sum of	36,321.55
Storage expenses for the period August 30, 1960 to September 1, 1961 of cabinets and millwork and carpentry which could not be installed	\$ 4,701.00
Additional insurance expenses occasioned by the aforementioned delays	3,529.81
Legal expenses incurred with respect to the proceedings before the National Labor Relations Board	2,222.14
Legal fees, costs and disbursements during the construction period due to interference and delays caused by the defendants, thereby obligating plaintiff to incur following expenses: Attorneys' fees for Bonding Company Bonding Company charges Title Company charges Attorneys' fees paid to plaintiffs' attorneys because of the defendants'	18,331.27 2,935.50 354.15
breaches and interference with the plaintiff's contract	51,191.81
Shop drawings costs not provided for by the defendants	558.00

Cost of rew materials and labor occasioned by inaccuracy of specifications regarding sizes of windows and shop drawings as approved by defendant's architect.

\$ 11,331.88

Additional labor costs because of architect's failure to provide roof drawings for all units thereby requiring roof grading to be redone as well as removal of insulation and refinishing

11,500,00

Removal and re-erection of scaffolding to install auditorium ceiling due to failure of defendant's architect to provide and interpret drawings for said ceiling.

2,193.51

(c) Extras and other items due to the

miaintiff:

Extras due to the plaintiff set
forth at pages 2 and 3 of the plaintiffs'
answer to defendant's interrogatories \$ 27,217.90

Retainage withheld by the defendant
School District 183,695.00

Retainage for extras withheld by the
Defendant School District 7,932.40

Additional bank interest incurred
occasioned by the aforementioned
delays up to and including December
31, 1966 90,545.09

(d) Plaintiff conterds that he suffered

additional damages as follows:

Damage to the plaintiff's business reputation \$35,509.75

Loss of business to the plaintiff occasioned by the aforementioned delays 64,400.00

- (2) The defendant School District waived its rights with reference to plaintiff's written notices of claim, for additional monies due for changes, extra work, delays, materials and other costs. Said waiver consists of the defendant having taken action on such claims without raising any objection to form or timeliness.
- (3) The damages herein claimed against the defendant School District are the same damages which are being claimed against all other defendants herein.
- (4) Defendant, Caudill, Rowlett & Scott induced the defendant Union Free School District #8 to breach its contract with the plaintiff and induced said School District to interfere with the remedies available to the plaintiff under the contract as follows:

 failing to certify substantial

completion;

failing to certify the amount due the plaintiff for extra work and charges;

failing to condemn work and work progress of heating and plumbing contractors, not in conformance with the contract; in that throughout the job, plumbing and heating contractors, had an insufficient labor force, and refusal by said contractors to follow plaintiff's instructions;

delay and failure to approve proposed suppliers, namely, requiring plaintiff to wait for the Gotham Chalk Board deliveries which were over one year late, also delay in approving

equipment proposed by the Heating Contractor;

failure to assert an independent status and seek the enforcements of the faithful performance of the contract by all the contracting parties;

failure to make decisions on matters relating to execution and progress of the work

- b. The defendant architect took sides with the School Board with respect to the contentions as set forth by the paragraphs above, in dereliction of his duty as provided by Articles 38 and 39 of The General Conditions of the Contract, relating to overflow of waters on contract site and draining thereof; in allowing the Clerk of the Works to exercise overall authority in running the job; in not having a representative continually on the job, in not acting on plaintiff's proposals relating to installation of a running track and tennis court and generally being derelict in their day to day management of the job, not providing competent personnel on the job site on a more than once a week basis; fullure to give priority to construction of units B & C by allowing the Clerk of the Works to divert the heating and plumbing contractors to work on unit A;
- (5) Defendant Edward C. Manning induced the defendant Union Free School District No. 8 to breach its contract with the plaintiff and induced the School District to interfere with the

remedies available to the plaintiff under the contract as follows:

- a. Refusal to submit to the School District the requests for additional costs from the plaintiff during the Fall of 1962.
- b. Re-arranging the contract terms by having the School District purchase directly from a supplier, rather than have the plaintiff furnished in accordance with the contract.
- c. Furnishing the Clerk of the Works with erroneous instructions as to the plaintiff and plaintiff's responsibility for coordinating the work.
- d. Failure and refusal to advise the Ethool District of plaintiff's complaints against the other prime contractors and against the Clerk of the Works for assuming the role of coordinator.
- e. Insistence that the plaintiff furnish work and materials beyond the contract and without written authority.
- f. Instructing the architect not to approve additional costs for the plaintiff because of the unavilability of funds in the School District.
- g. Instructing the other prime contractors to follow the directions of the Clerk of the Works and not the plaintiff in the coordinating of work of the contract.
- h. Dealing directly with plaintiff's sub-contractors without the plaintiff's consent.

- i. Advising the School District to withhold any consents to an extension of time and thereafter recommending that the plaintiff be sent a three-day notice.
- j. Approving and acquiescing in Caudill, Rowlett & Scott's failure to furnish adequate supervision and direction of the work and in the approving of the Clerk of the Work's performance of such functions.
- k. The plaintiff further contends that by reason of the aforesaid, he was caused to sustain the damages as set forth in item number "3. B. (1) a. to d.".
- 3. C. It is the contention of the defendant Union Free School District No. 8 that:
- (1) Said defendant did not breach its contract with the plaintiff.
- (2) The delay in construction of the school was caused by plaintiff's failure to properly and adequately perform its contract and by other reasons for which the defendant is not responsible.
 - (3) The plaintiff breached its contract as follows:
- a. Failed to substantially complete the work of the contract by December 15, 1961.

- b. Performed the landscaping so poorly that it had to be done again.
- c. Performed the contract so ppprly that portions had to be done over again.
- d. Failed to make payment to sub-contractors and materialmen as required under the contract and specifications within a reasonable time.
- e. Became unable to meet his obligations to subcontractors and materialmen and otherwise failed to perform or permit the occurrence of the conditions precedent.
- f. Failed to properly perform his obligation to coordinate the work of other prime contractors.
- (4) No claim was filed with it by the plaintiff covering the subject matter of the causes asserted against it in this action in compliance with Section 3813 of the Education Law of the State of New York.
- (5) The issues presented to the Court in this action have been heretofore determined adversely to the plaintiff by the Supreme Court of the State of New York, County of Rockland, and that said determination is recognitional.
- (6) Plaintiff's claim for compensation for alleged extra services does not meet the requirements of the construction contract

in respect to authorisation for rendering extra services and there may be no waiver of such provision against a public body.

- (7) Plaintiff does not have standing to maintain this action, as his rights were transferred to his surety company.
- (8) The damages alleged by the plaintiff are special damages of which the defendant had no notice.
- (9) Plaintiff may not institute an action under an express contract and on quantum meruit, and may not, in any event, sue for quantum meruit since there is an express contract between the parties.
- (10) Plaintiff may not recover any moneys for which there has not been a valid appropriation by the defendant.
 - (11) Plaintiff has been paid in full.
- (12) Prior proceedings, still pending, seeking damages, instituted by the plaintiff against Charles W. Ackerman, Inc. and Thomas J. Kempton, Jr., Inc. bar this action.
- (13) This action is barred by the Statute of Limitations of the State of New York and by the conditions of the contract.
 - 3. D. The defendant Edward C. Manning contends:
- (1) The contract between the defendant School
 District and the plaintiff was not breached by the School District.
 - (2) The defendant Edward C. Manning did not

induce a breach of contract on the part of the School District and did not induce the School District to interfere with the remedies available to the plaintiff under the contract.

- (3) The acts of the defendant Edward C.

 Manning, as an official of the School District, were privileged
 and without legal malice.
- (4) Said defendant, as an official of the School District and an agent thereof, is not subject to a suit for inducement of breach of contract.
- (5) No claim may be asserted against said defendant without compliance by the plaintiff with the Education Law and other provisions of the laws of the State of New York in connection with the filing of claims against a public body and its agents, and that plaintiff has failed to satisfy such statutory requirements.
- (6) The damages claimed by the plaintiff are not the proximate cause of any alleged wrongful act on said defendant's part.
 - 3. E. The defendant, Caudill, Rowlett & Scott contends:
- (1) The contract between the School District and the plaintiff was not breached by said defendant School District and said defendant did not interfere with any remedies avialable to the plaintiff under the contract.

- (2) The defendant Caudill, Rowlett & Scott did not induce the School District to breach its contract with the plaintiff and did not induce the School District to interfere with the remedies available to the plaintiff under the contract.
- (3) All of the acts of this defendant in connection with the contract between plaintiff and the School District were in its professional capacity as architects for the project, which acts were privileged and without legal malice.
- (4) This defendant, in acting as either agent for the defendant School District or in its status as a quasi-arbitrator, is immune from a claim of inducement of breach of contract.
- (5) Any claim of the plaintiff that the defendant's performance as an architect was inadequate cannot support a cause for an alleged inducement of breach of contract.
- (6) The plaintiff may not rely upon acts of the architect, which he claims as constituting breaches of contract on the part of the defendant School District as, at the same time, constituting acts which induced that breach of contract.
- (7) The plaintiff may not institute and prosecute at the same time an action against the defendant School District for a breach of contract and against the defendant, Caudill, Rowlett & Scott for inducement of breach of contract and seek the same damages against both.

- (8) In order to proceed against this defendant, plaintiff is required to establish that it could not obtain satisfaction of a judgment against the School District arising out of an established breach of contract.
- (9) The plaintiff did not properly, adequately and satisfactorily perform under its contract with the defendant School District and that the damages claimed to have been sustained by the plaintiff were occasioned by his own failure to perform, his own inefficiency, and by causes for which the defendants in this action have no responsibility.
- (10) The damages claimed by the plaintiff are not the proximate cause of any alleged wrong committed by this defendant, nor did this defendant have any notice concerning the nature of the damages claimed.
- (11) The cause of action asserted against this defendant is barred by the Statute of Limitations of the State of New York and the conditions of the contract.
- (12) Claims were not filed by the plaintiff against the defendant School District and the defendant Caudill, Rowlett & Scott in conformity with the Education Law of the State of New York and other laws of the State of New York, and therefore there can be no recovery against this defendant.
 - (13) The issues asserted against the School District

Were previously determined by the Supreme Court of the State of New York, County of Rockland, and are res judicata, and thus if there can be no recovery against the defendant School District for this reason, there can be no recovery against the defendant, Caudill, Rowlett & Scott.

- (14) The acts asserted by the plaintiff, under his contentions as performed by the defendant Caudill, Rowlett & Scott, did not induce the defendant School District to breach its contract and did not induce the School District to interfere with the remedies available to the plaintiff under the contract, and the said defendant Caudill, Rowlett & Scott contends that it took no action, nor failed to take any action, as architect for the project, which was contrary to its duty or obligations under its contract with the defendant School District, or otherwise.
- (15) Prior proceedings, still pending, instituted by the plaintiff against Mehl Electric Company and Thomas J. Kempton, Jr., Inc., seeking the same damages as are sought against this defendant, bar this action.
- 4. A. Th exhibits which each party now expects to offer at the trial are those referred to in the memoranda heretofore filed pursuant to local Calendar Rule 13(b)III(g). Should any party hereafter decide to offer additional exhibits, prompt notice of that fact should be given to each other party.

- B. The parties agree that any document from the file of defendant Union Free School District No. 8 or from the file of defendant, Caudill, Rowlett & Scott which was marked for identification on the deposition of any party may be received in evidence insofar as authenticity is concerned, each party, however, reserving the right to object to the materiality or rlevancy of such documents.
- 5. The parties agree that the witnesses whom each party now intends to call are those listed in the memoranda heretofore filed pursuant to local Calendar Rule 13(b)III(h). In addition, the defendants intend to call William J. Gleason, Jr. of Project Management Services, Inc., Upper Darby, Pennsylvania, as an epxert witness on the subject of construction scheduling and performance and to offer in evidence exhibits relating to such testimony. Should any party hereafter decide to call additional witnesses, prompt notice of their identity should be given to each other party.
- 6. There is no agreement to limit the number of expert witnesses.
- 7. The following are all of the claims for damages or for other relief asserted by the plaintiff in this action, as of the date of this conference:

EXHIBIT A ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 5, 1974 IN OPPOSITION TO MOTION

- a. Damages sustained by reason of the breach of contract by the defendant School District in the sum of \$1,783,534.66.
- b. Damages sustained as a result of performing extra work and change orders above and beyond that called for by the within contract as well as with work, labor, services performed and materials furnished which were of the reasonable value of \$1,438,593.45.
- c. Damages sustained as the result of the defendants Caudill, Rowlett & Scott and Edward C. Manning inducing the breach of contract by the School District, in the sum of \$1,783,534.66.
 - 8. There is no other agreement between the parties.
- 9. The issues to be tried are formulated by all the issues raised by the contentions of the parties as set forth Articles

 3B. 3C. 3D and 3E of this Pre-Trial Order.

Dated: New York, New York September 6, 1968

SO ORDERED

					U.S.D.J.	
Consented	to:					
Attorneys	for	Plaint	Lff			
	4 L	37				

EXHIBIT B ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR. SWORN TO APRIL 5, 1974 IN OPPOSITION TO MOTION



THE CONTINENTAL INSURANCE COMPANIES

THE CONTINENTAL INSURANCE COMPANY + FIREMEN'S INSURAL TE COMPANY OF NEWARK, NEW JERSEY THE FIDELITY AND CASUALTY COMPANY OF NEW YORK + COMMERCIAL INSURANCE COMPANY OF NEWARK, N. J. NIAGARA FIRE INSURANCE COMPANY - NATIONAL-BEN FRANKLIN INSURANCE COMPANY OF PITTSBURGH, PA. NATIONAL-BEN FR-INKLIN LIFE INSURANCE CORPORATION - BOSTON OLD COLONY INSURANCE COMPANY SEABOARD FIRE & MARINE INSURANCE COMPANY - WASHINGTON GENERAL INSURANCE CORPORATION

Eighty Maiden Lane, New York, New York 10038



Registered Mail Return Receipt Requested

May 9, 1969

Mr. Robert A.W. Carleton, Jr. 1078 Anderson Avenue Palisade, New Jersey

Mrs. Julia S. Carleton 1078 Anderson Avenue Palisade, New Jersey

RE: Our File No. 109-S-52634
Obligee: Board of Education,
Union Free School District #8,
Town of Orangetown, Pearl River,
Rockland County, N.Y.
Ferformance and Labor & Material
Payment Bonds # 13850

Dear Mr. Carleton and Mrs. Carleton:

On August 9, 1960, The Firemen's Insurance Company of Newark, New Jersey (Firemen's), signed the above described bonds as surety wherein Robert A.W. Carleton, Jr., an individual doing business under the firm name and style of Carleton Brothers Company was Principal. As an inducement to sign those bonds as surety, Robert A.W. Carleton, d/b/a Carleton Brothers Company, and Julia S. Carleton executed indemnity agreements on July 29, 1960, and August 2, 1960, respectively, wherein they, among other things, obligated themselves to indemnify Firemen's and save it harmless from and against all liability, etc., which Firemen's might sustain or incur by reason of having executed those bonds.

Firemen's did sustain a loss of \$426,288.58 as a result of its having signed the described bonds as surety. In order to recoup its loss, Firemen's obtained a .300,000 note signed by both indemnitors, brought suit on the note and the indemnity agreements, obtained a Bond from Robert A.W. Carleton, Jr., in the amount of \$200,000 secured by mortgages on certain real property, obtained assignments of interest in various securities owned by the indemnitors which were pledged with various banks and took possession and title to other securities of the indemnitors.

At the instance of Robert A.W. Carleton, Jr., and upon his firm telief that a suit by him against the School District would produce funds sufficient to fully indemnify Firemen's, Firemen's has refrained from liquidating any of the assets to which it has access or foreclosing on the mortgages or filing the judgment

EXHIBIT B ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 5, 1974 IN OPPOSITION TO MOTION

The CONTINENTAL INSURANCE COMPANIES

Mr. Robert A.W. Carleton, Jr. Mrs. Julia S. Carleton

May 9, 1969 Page 2

in its suit against the indemnitors.

It has now come to our attention that the suit being prosecuted by Robert A.W. Carleton, Jr., will not produce the funds necessary. It is therefore encumbant upon Firemen's to take all steps necessary to recoup its loss which will entail continued processing of its suit against the indemnitors, liquidation of securities in its possession, foreclosure of mortgages and the calling upon the various banks to liquidate the securities of the indemnitors in their respective possessions, reimbursing themselves for monies due and to remit the excess to Firemen's.

Firemen's must act promptly and will do so unless you, as indemnitors, offer an alternative acceptable means of reimbursing Firemen's.

I will expect to hear from you within five days of receipt of this letter.

Very truly yours

F. M. Scaglione, Supt.

FMS: js

UNITED STATES DISTRICT COURT

CHAMBERS OF
JUDGE MURRAY I. GURFEIN
UNITED STATES COURT HOUSE
FOLLY SQUARE
NEW YORK, N. Y. 10007

June 20, 1972

Mr. Robert A. W. Carleton, Jr. Carleton Bros. Co. 1078 Anderson Avenue Palisade, N.J. 07024

Dear Mr. Carleton:

I have read your letter of June 16 which I now return with its enclosures. Through independent inquiry I have leased that your earlier case is in all respects terminated and that nothing concerning you is pending before this Court.

If you should wish to commence an action based on any of the allegations contained in your letter, I recommend that you contact either a lawyer or the Pro Se Clerk of this Court in Room615-B. Thus, you can be aided in presenting any claim you may have by means of the proper procedure.

Very truly yours,

U.S.D.J.

lkr Encl.

ENDORSEMENT ON MOTION OF REMAINING DEFENDANTS FOR SUMMARY JUDGMENT

April 5, 1974

The within motion for summary judgment must be granted for reasons given in the endorsement this day granting a similar motion by defendants CAUDILL, ROWLETT & SCOTT. The clerk is directed to enter judgment in favor of the moving defendants dismissing the action as to them. There is no just reason for delay and express direction for entry of judgment (Fed. R. CIV P. 54(b)).

SO ORDERED,

/S/ INZER B. WYATT U.S.D.J.

JUDGMENT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted]

The within named defendants having moved for summary judgment pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the motions having come on to be heard before the Honorable Inzer B. Wyatt, United States District Judge, and the Court thereafter on April 8, 1974, having handed down its memorandum endorsement granting the said motions, it is,

ORDERED, ADJUDGED and DECREED: That defendants UNION FREE SCHOOL DISTRICT NO. 8, TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK; GEORGE W. RENC; LEE N. STARKER; EDWARD C. MANNING; WALTER REINER; RICHARD STOBAEUS; and CAUDILL, ROWLETT AND SCOTT, have judgment against the plaintiff, ROBERT A. W. CARLETON, JR. d/b/a CARLETON BROTHERS COMPANY, dismissing the complaint for lack of jurisdiction of the subject matter.

Dated: New York, N.Y. April 10, 1974

> /s/ Raymond F. Burghardt Clerk

PLAINTIFF'S MOTION FOR RENEWAL AND/OR REARGUMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Caption Omitted

SIRS:

PLEASE TAKE NOTICE, that upon the order entered herein on the 10th day of April, 1974, granting two motions brought on behalf of all of the defendants herein for judgment dismissing the complaint, and upon the papers on which said order was granted, and upon the papers on which said order was granted, and upon the annexed affidavit of ROBERT A. W.

CARLETON, JR., duly sworn to the 22nd day of April, 1974, a motion will be made before the Honorable Inzer B. Wyatt, United States District

Court Judge, at Room 705, United States Court House, Foley Square,

New York, New York, on the 10th day of May, 1974, at 2:30 o'clock in the afternoon of that day, or as soon thereafter as the undersigned can be heard, for leave to reargue and/or renew defendant's motion for summary judgment and related relief, and in the event such leave is granted that such argument and/or reargument then and there proceed and for such

PLAINTIFF'S MOTION FOR RENEWAL AND/OR REARGUMENT

other and further relief as to this court may seem just and proper.

Dated New York, New York, this 22nd day of April, 1974.

Yours, etc.

ROBERT A. W. CARLETON, JR.
Plaintiff Pro Se
Office & P. O. Address
1078 Anderson Avenue
Palisade, New Jersey 07024
Telephone: (201) 943-0328

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Caption Omitted

STATE OF NEW YORK)
CITY OF NEW YORK : ss.:
COUNTY OF NEW YORK)

ROBERT A. W. CARLETON, JR., being duly sworn, according to law, deposes and says:

- 1. I am the plaintiff, appearing pro se, in the aboveentitled action.
- Deponent makes this affidavit in support of an application for the reargument and/or renewal of a motion brought on behalf of the defendants herein for summary judgment and related relief.
- 3. The said motion for summary judgment and related relief was brought by defendants by notices of motion dated the 19th day of March, 1974, and the 3th day of March, 1974, and returnable at a motion term of this Court held in and for the Southern District of New York on the 29th day of March, 1974 and the 5th day of April, 1974 respectively. That motion returnable on the 29th day of March, 1974 was adjourned to

the 5th day of April, 1974 to coincide with the later motion for the same relief brought on behalf of the remaining defendants.

- 4. On the said 5th day of April, 1974, defendants' motions came on to be heard before the Honorable Inzer B. Wyatt, United States District Court Judge, and on said date, defendants' affidavits and plaintiff's answering affidavit were submitted to the Court.
- 5. Thereafter, and on the same date, a decision was duly rendered on the said motions by Judge Wyatt granting defendants' motion for judgment dismissing the complaint. On the 10th day of April, 1974, an order was made and entered granting the said motion and dismissing the complaint.
- 6. In the papers submitted by Plaintiff in opposition to the said motion for summary judgment, deponent omitted to direct the court's attention to the fact that the relief sought in the complaint was not solely relief from a court order, but included an action for the equitable rescission of certain general releases which relief could not have been included in a Rule 60 motion for relief from a court judgment only.

Events Occurring Between Entry of Judgment and Date of Commencement of this Action.

7. The judgment from which plaintiff seeks relief was entered

on or about December 10th, 1969.

- 8. The plaintiff thereafter attempted to seek counsel to make an application for relief from the said judgment; but to no avail. After communicating with numerous attorneys, on Tuesday, August 25, 1970, plaintiff visited the offices of the Honorable Milton Pollack, the Judge who rendered the order from which plaintiff now seeks relief; but was unable to meet with Judge Pollack. Under date of August 26th, 1970, plaintiff wrote a letter to Judge Pollack, in essence, seeking the relief sought by the present action. A copy of this letter is annexed hereto and made a part hereof as Exhibit A.
- 9. By letter dated September 17th, 1970, Judge Pollack replied to plaintiff stating that he had attempted to investigate certain allegations and that as far as the Court was concerned the matter was fully disposed of on the record in open court. A copy of the letter of Judge Milton Pollack is annexed hereto and made a part hereof as Exhibit B.
- 10. By letter dated September 19th, 1970, plaintiff again sought relief from Judge Pollack. A copy of the letter is annexed hereto and made a part hereof as Exhibit C.
- 11. Plaintiff continually sought legal advice, but was unable to obtain the assistance of New York counsel. On January 28th, 1972

plaintiff attempted to seek relief in the form of correspondence with the Commissioner of Insurance and Banking, Department of Insurance and Banking in Trenton, New Jersey. A copy of that letter is annexed hereto and made a part hereof as Exhibit D.

- 12. On February 25th, 1972, the State of New Jersey Department of Insurance responded to plaintiff stating that the problem will receive their attention and he will be further advised of their investigation. A copy of this letter is annexed hereto and made a part hereof as Exhibit E.
- 13. By letter dated March 14th, 1972, a principal investigator to the State of New Jersey Department of Insurance wrote to plaintiff suggesting that he retain counsel. A copy of such letter is annexed hereto and made a part hereof as Exhibit F.
- 14. By letter dated March 22nd, 1972, plaintiff again requested assistance from the principal investigator of the New Jersey Department of Insurance. A copy of that letter is annexed hereto and made a part hereof as Exhibit C.
- 15. Subsequently, and on April 13th, 1972, plaintiff sought the assistance of the Office of the Attorney General of the State of New

York. A copy of that letter is annexed hereto and made a part hereof as Exhibit H.

- 16. Subsequently, on May 5th, 1972, plaintiff met with Emil V. Pilz, Esq. and Eugene Schaffel, Esq. of the law firm of Jarvis, Pilz, Buckley & Treacy. The meeting lasted approximately half a day and subsequently by letter dated May 8th, 1972, the said law firm responded to plaintiff that they were unable to give assistance to him in regard to this problem. A copy of this letter is annexed hereto and made a part hereof as Exhibit I.
- 17. With all efforts being to no avail, plaintiff again wrote to the Honorable Milton Pollack by letter dated May 11, 1972 seeking the same relief. A copy of this letter is annexed hereto and made a part hereof as Exhibit J.
- 18. By letter dated May 12, 1972, Judge Pollack referred back to his letter of May 11, 1972. A copy of Judge Pollack's May 12, 1972 letter is annexed hereto and made a part hereof as Exhibit K.
- 19. By letter dated May 13, 1972, plaintiff tenaciously wrote again to Judge Pollack. A copy of this letter is annexed hereto and made a part hereof as Exhibit L.
 - 20. Not receiveing an answer to his letter dated May 13,

1972, plaintiff again wrote to Judge Milton Pollack by letter dated May 19, 1972. A copy of this letter is annexed hereto and made a part hereof as Exhibit M.

- 21. Finding no available help through the use of an attorney, and no available help by direct correspondence with the Court, by letter dated May 31, 1972, plaintiff sought the assistance of the Honorable Clifford P. Case, United States Senator from the State of New Jersey. A copy of plaintiff's letter to Senator Case is annexed hereto and made a part hereof as Exhibit N.
- 22. By letter dated June 6, 1972, United States Senator Case responded that he could be of no assistance to plaintiff. A copy of this letter is annexed hereto and made a part hereof as Exhibit O.
- 23. Most significantly, by letter dated June 16, 1972, plaintiff wrote a letter addressed to the presiding judge for the United States District Court of the Southern District of New York. A copy of this letter is annexed hereto and made a part hereof as Exhibit P.
- 24. United States District Court Judge Murray I. Gurfein, wrote to plaintiff by a letter dated June 20, 1972. A copy of this letter is annexed hereto and made a part hereof as Exhibit Q. In this

letter is annexed hereto and made a part hereof as Exhibit Q. In this letter Judge Gurfein states that should plaintiff wish to commence an action based upon any of the allegations contained in his letter, Judge Gurfein would recommend that he either contact an attorney or the pro se clerk of this court in Room 16-B. It should be noted that Judge Gurfein referred to an "action based upon any of the allegations contained in your letter".

- 25. In compliance with the suggestion of Judge Gurfein, on June 23, 1972, plaintiff again wrote to Eugene Schaffel, Esq. of the law firm of Jarvis, Pilz, Buckley & Treacy and sought their assistance. A copy of this letter is attached hereto and made a part hereof as Exhibit R.
- 26. By letter dated July 3, 1972, plaintiff sought the assistance of the United States Supreme Court. However, the United States

 Supreme Court responded by advising that said court cannot advise plaintiff and does not answer questions on the basis of correspondence. A copy of plaintiff's letter to the United States Supreme Court and the answer of the United States Supreme Court is annexed hereto and made a part hereof as Exhibit S.
- 27. Still frustrated, by letter dated July 17, 1972, plaintiff again wrote to Judge Milton Pollack. A copy of this letter is annexed

hereto and made a part hereof as Exhibit T.

- 28. By letter dated June 19, 1972, Rose A. Lanci, Secretary to Judge Milton Pollack, wrote to plaintiff and advised him that as far as Judge Pollack's office was concerned the matter was closed. A copy of this letter is attached hereto and made a part hereof as Exhibit U.
- 29. By letter dated July 27, 1972, plaintiff again wrote to Judge Pollack seeking the same relief. A copy of this letter is annexed hereto and made a part hereof as Exhibit V.
- 30. Tenaciously, plaintiff wrote to Judge Pollack on August 24, 1972 again and a copy of this letter is annexed hereto and made a part hereof as Exhibit W.
- 31. In the form of an application plaintiff wrote to Chief Justice Warren E. Berger of the United States Supreme Court in Washington by a letter dated August 31, 1972, a copy of which is annexed hereto and made a part hereof as Exhibit X. By letter dated September 7, 1972, plaintiff's letter to Chief Justice Warren Berger was returned to him by the United States Supreme Court with the notation that it failed to comply to any extent with the Court's Rules of Procedure, a copy of which were enclosed. A copy of this letter is annexed hereto and made a part

hereof as Exhibit Y.

- 32. Plaintiff then adopted the right of issuing complaints to the "Ethics Committee" of the New York Bar Association. A copy of his first complaint letter dated December 8, 1972 is annexed hereto and made a part hereof as Exhibit Z.
- 33. The Committee on Grievances for the Association of the Bar of the City of New York responded to plaintiff by a letter dated December 14, 1972, indicating that it did not have jurisdiction over the matter. A copy of this letter is annexed hereto and made a part hereof as Exhibit AA.
- 34. Plaintiff responded by letter dated December 19, 1972 to the "Ethics Committee" of the Association of the Bar of the City of New York indicating that other attorneys had offices in New York and a copy of this letter is annexed hereto and made a part hereof as Exhibit BB.
- 35. By letter dated June 16, 1973, the associate counsel of the Committee on Grievances of the Association of the Bar of the City of New York responded to plaintiff that for other reasons he was closing his file. A copy of that letter is annexed hereto and made a part hereof as Exhibit CC.

- 36. By letter dated January 19, 1973, the associate counsel of the Committee on Grievances of the Association of the Bar of the City of New York returned to plaintiff all documents submitted by plaintiff in support of his complaint. A copy of this letter is attached hereto and made a part hereof as Exhibit DD.
- 37. On February 13, 1973, plaintiff again wrote to Emil V. Pilz, Esq. of the law firm of Jarvis, Pilz, Buckley & Treacy. A copy of this letter is annexed hereto and made a part hereof as Exhibit EE.
- 38. Emil V. Pilz responded by letter dated February 21, 1973 indicating that there was no way in which he could be involved in an action against attorneys. A copy of this letter is annexed hereto and made a part hereof as Exhibit FF.
- 39. Thereafter, and by letter dated February 28, 1973, a copy of which is annexed hereto and made a part hereof as Exhibit GG, another law firm responded that it could not be involved in the case because they were New Jersey counsel and referred the plaintiff to New York counsel.
- 40. By letter dated March 5, 1973, plaintiff again wrote to New Jersey counsel seeking assistance. A copy of that letter is annexed hereto and made a part hereof as Exhibit HH.

- 41. As a result of being totally frustrated in his tenacious efforts to obtain the assistance of counsel, and still being aggrieved by the judgment discontinuing the first action, on May 2, 1973, Carleton filed suit against defendants herein, except for Union Free School District No. 8 and included certain other parties. Unfortunately, Carleton lacked the assistance of counsel and filed a complaint substantially the same as in the original litigation.
- 42. This second action filed in United States District Court for the Southern District of New York under No. 73-CIV-1946, was finally dismissed on December 28, 1973. Carleton's motion for reargument was denied on January 11, 1974.
- 43. Thereafter, Carleton communicated with the Bergen County
 Bar Association in Hackensack, New Jersey in still another effort to obtain
 an attorney. The Bergen County Bar Association referred Carleton to the
 firm of Kleeman & Hirsch in Paterson, New Jersey. The firm of Kleeman
 & Hirsch felt that the matter should be handled by attorneys located
 within the Southern District of New York and accordingly referred Carleton
 to an attorney located within the Southern District of New York.
- 44. Carleton presented his situation for review by New York counsel who advised him not to appeal from the judgment dismissing the second action; but to proceed by way of an independent action seeking relief from the judgment entered in the first action and the equitable

rescission of the stipulation upon which it was based and the general releases executed contemporaneously therewith. Hence, the action which is presently brought before this court, hereinafter referred to as the present action.

Prior Proceedings in the Current Action

- 45. This present action was commenced by the filing of a complaint with the Clerk of this Court on February 20, 1974 and service was made upon the defendants as follows: Upon Richard Stobaeus on March 4, 1974; on Union Free School District No. 8 on February 27, 1974; on George W. Renc on March 1, 1974; on Lee N. Starker on February 27, 1974; on Edward C. Manning on February 27, 1974, on Walter Reiner on Fesruary 27, 1974; and on Caudill, Rowlett & Scott on February 22, 1974.
 - 46. No answers have been filed by any of the defendants to date.
- 47. By a notice of motion dated March 13, 1974, defendant Caudill, Rowlett & Scott moved for dismissal and summary judgment with a return date of March 29, 1974.
- 48. By a notice of motion dated March 19, 1974, the remaining defendants moved for the same relief with a Notice of Motion bearing the return date of April 5, 1974. By verbal stipulation and the agreement of

the Court, the motion brought on behalf of Caudill, Rowlett & Scott was adjourned to April 5, 1974 in order that both motions may be heard on the same date.

- 49. On April 5, 1974, a decision was rendered from the bench and memorandum endorsed granting summary judgment in favor of all defendants.
- 50. This decision was reduced to an order entered on April 10, 1974.
- 51. It is from this order and the motions last recited that this present motion for reargument and/or renewal is addressed.

Circumstances Surrounding Execution of Subject Instruments

- 52. During the month of December, 1969, plaintiff was in a state of diminished mental capacity and extreme emotional stress as the result of certain personal and business problems, to wit:
- (a) Plaintiff, at that time a bachelor of approximately 60 years of age, resided in his family home with his mother, who was suffering from a diabetic condition exacerbated by a heart ailment from which she subsequently died.
- (b) The subject litigation in the first action concerned a construction contract and the terms and conditions of the construction contract required plaintiff to post a performance bond in the sum of

as collateral. During December of 1969, the bonding company was threatening both the plaintiff and his severely ill mother with proceedings to indemnify it in a sum of approximately half a million dollars.

- (c) Additionally, plaintiff was in debt to subconstructors in a sum of approximately \$335,000.00, who were pressing for payment.
- (d) At that time, five separate banks were owed half a million dollars in the aggregate and were threatening to liquidate collateral.
- (e) On the various loans, approximately \$750,000.00 of plaintiff's dying mother's securities were pledged. Various creditors were threatening to liquidate the securities in order to satisfy obligations due to them.
- (f) Every asset of both the plaintiff and his dying mother were pledged to either the bonding company or a bank and the plaintiff was in a state of near bankruptcy. Plaintiff, living with his dying mother was subject to severe emotional pleas to extricate her from the situation which she blamed upon the plaintiff and claimed was not of her own making.
- (g) Plaintiff's mother pleaded and demanded that she be put in the position to have her name cleared of the various encumbrances and blots upon her repurtation.
 - (h) To this end, plaintiff's mother obtained the assistance

of plaintiff's brother and sister in order to further emotionally apply pressure against the plaintiff.

- (1) The emotional pressures hereinbefore described are the direct result of the financial condition of the plaintiff created by the withholding of funds due to him from the defendants.
- (j) The plaintiff had been instructed by his counsel that the events which were to take place with the judge present were designed as an emergency measure, remedial in nature, in order to alleviate the financial and emotional pressures brought to bear against this plaintiff.
- (k) Counsel for the plaintiff had informed the plaintiff that he was to answer "Yes" to all questions asked of him by the judge and by his counsel no matter what the questions were and not to worry about the content of the questions nor the effect of the answers because he had been able to "put one over" on the judge before he became a judge when they were opposing counsel in unrelated litigation and he can continue to do so while the judge was on the bench.
- (1) In effect, plaintiff was advised by his counsel at the time of the settlement herein that the settlement was an emergency remedial action taken to obtain funds urgently needed to alleviate plaintiff's critical financial situation, and that the effect of the settlement could be overcome so as to permit the plaintiff to proceed with the prosecution

of his case thereafter.

- (m) When plaintiff, subsequent to the settlement date, approached his attorneys and asked that they continue the prosecution, it was only on this date, subsequent to the termination of the case, which was in late February or early March of 1970 that the plaintiff realized that his action was, in fact, terminated and that the prosecution could not continue.
- 53. Plaintiff, whose financial shape was disastrous, and whose reasoning ability had been impaired, fell victim to his counsel's attempt to compel plaintiff to settle the first litigation against the will of the plaintiff to do so.
- 54. Prior attempts on behalf of the plaintiff's counsel and others to compel the plaintiff to settle the first action had proven unsuccessful and an attempt had to be found by plaintiff's counsel to effectuate a settlement. Plaintiff's counsel had specialized in personal injury litigation and lacked the expertise to handle construction contract litigation. As a result of these reasons, and probably others, unknown to your deponent, plaintiff was not informed that the settlement on the record could subsequently be retracted, leaving him in a position where his financial pressures would be alleviated, his mother's collateral released

and name cleared and then the prosecution could begin anew.

55. It was only subsequent to the entry of the order discontinuing the first litigation, and in late February or early March of 1970, when plaintiff learned, to his regret that his attorneys would not reopen the settlement, as they had promised.

Prior Attempts to Induce Execution of Documents

- 56. From the period of March 13, 1969 through December, 1969, plaintiff's counsel had advised plaintiff that his case was weak insofar as liability was concerned due to a purported failure on the part of the plaintiff to file a notice required by Section 3813 of the Education Law of the State of New York. During this period of time, various experts were introduced to plaintiff by plaintiff's counsel in order to bolster their position.
- 57. One such expert was Benjamin Leavin, Registered Architect Building Construction Consultant, 111 East 56th Street, New York, New York. Mr. Leavin was paid \$200.00 as a consultant fee in November of 1969, and his advice to me was that my claim was barred due to a failure on my part to timely file a notice in compliance with Section 3813 of the Education Law of the State of New York.

Expressions of Dissatisfaction with the Execution of Subject Documents.

- 58. A recitation of plaintiff's dissatisfaction with his execution of the subject documents is contained hereinbefore under the topic heading "Events Occurring Between Entry of Judgment and Date of Commencement of this Action", including paragraphs 7 through 44 hereinbefore.
- 59. It should be noted that it was not until late February or early March of 1970 that your deponent first learned that his counsel would not reopen the first litigation and continue with the prosecution of plaintiff's claims against the defendants herein, as detailed in the complaint filed therein.
- 60. No previous application has been made for the same or similar relief.

WHEREFORE, deponent respectfully prays that the Court grant this application for leave to reargue and/or renew defendants' said motion for summary judgment and upon such argument and/or reargument, the aforesaid decision of Judge Wyatt dated the 5th day of April, 1974, and the order entered thereon granting said application be vacated and set aside and that defendants' said application be denied in its entirety, together with such

other, further and different relief in the premises as to this Court may appear just and proper.

/s/ Robert A. W. Carleton, Jr.
ROBERT A. W. CARLETON, JR.

Sworn to before me this

22nd day of April, 1974

/s/ Inge F. DeVaney
INGE F. De VANEY
Notary Public, State of New York
No. 31-6006135
Qualified in New York County
Commission Expires March 30, 1976

Telephone 201 -WHitney 3-0328

Carleton Brothers Company

1078 ANDERSON AVE. Palisade, N. J.

GENERAL CONSTRUCTION

Hon. Milton Pollack. Poley Square, at Worth Street, New York City, New York.

August 26.1970

Dear Sir:

I visited your office, unannounced, Tuesday, August 25,1970,

seeking a face meeting with you.

I have been urged by my trchitect, A. I. A. arbitration procl representative, considering claims by me, against the prime contractor for erection of plumbing work for the Pearl River, II. Y. high school; to go to you personally, and loarn what you were told by my attorney and the defendant attorney, David H. Moses.

He would like me to tell him, why I was prohibited from securing

the federal trial of my claims, since I waited for it from Movember 1904.

This plumber was given written instructions, contrary to his signed contract's termo, by Mr. R. R. Sawicki, the architect's job representative to take directives from Mr. R. Stobeaus, job site clerk representative of the Board of Education, as agreed in writing, at the written request of Superintendent of Schools, Mr. Manning, in violation with all specific legal terms within each prime construction contract for this high school.

I have also enclosed two letters that I have written, one was sent to you August 4,1969.

I will welcome the priveledge of meeting with you, at your carlicat convenience, to learn what was stated regarding my claims for trial to you.

I now have suffered the loss of more than three million dollars of mine, together with, on account of my age, ten years for gainfull coplay-

The written testimony reveal facts to the Arbitration Panol, that I am the victim of conspiracios. That the W. Y. Education Law (rule) 5315. could never have under my circumstances, aforded legal defense to any ". Y. Board of Education. He feels that the facts in my claims warrant a full disclosure to redress my damages.

The Architect provided their Construction Project Representative.

Nr. R. R. Savicki, whom they, together with the Board of Education and he, himself, to be a qualified, knowledgeable licensed N. Y. Architect, when I signed their contract documents at the same time as the three other signed prime contractors for erection of their designed high school for Pearl River, R. Y., August 9,1060. But, under oath in R. B. T. testimony prior to my anticipated Federal Trial of my claims, Mr. N. R. Sawicki, confessed to being a man training to be an architect, without any knowledge of N. Y. State's Education Department's Architectural specification of School Buildings requirements, or how to interpot the designed intent of the architect's contract drawings and specifications. Since he was only employed about a month prior to producement of advertised public proposals.

These contracts all specified that the several prime contractors abide by the directives from the architect.

All signed contracts stipulated that the general contractor must be fully informed concerning all matters relative to construction of this high school project to be able to co-ordinate all required site work erections. I was denied this information and possess written records to support all of my statements.

The Board of Education failed to provide their construction site property (learned at K. B. T. of Arch! ot) survey staked out, or correct the problem of continual sewage and a face water drainage across their land from adjacent land owners and Town, and have the Town build the required public street as agreed with their Architect prior to securing construction proposals and starting actual construction work for their high school project lands and buildings development.

I have filed several claims in compliance with N. Y. Education Rule \$3813, when and where as I was able to be aware of my construction work problems. Their Superintendent of Schools, Mr. Manning, (res adjudicate) refused to consider because he ordered the extra work performed without ever intending to pay for same, regardless of signed contractual terms.

In violation of all written contracts, Superintendent of Schools. Banning arranged through written expectent for himself and his Board of Elucation's Job Clerk to constantly interfere with and direct all of the several prime contractors' ambaontractors and employees on the site of the construction with approval of their architect.

The architect, the Board of Mauention's attorney, Mr. Marshall Rooney and Mr. Manning knew that their prime heating construction contractor was financially unable to perform his contracted work for them, on the verge of dealering bankruptey (Descender 1964) Pederal Courthouse at Nevark, N. J.); and they refused to demand that his bonding corpany take over proformance of that contracted work. Instead, they gradually financed his execution of contract tardy work, regardless of my claims filed as an 5815 provision, together with the utter disregard of their public's best interests and all their contracting parties.

EXHIBIT A ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Then, sometime past contractual time of completion, in order to secure and develop a new source for needed monies, without cost to the Board of Education, and without my knowledge, they made demands and claims against me to my Bonding Company; and replenished their school's treasury with demanded money from my bonding company for pay out as directed and permitted by Mr. Manning with the consent of attorney.

These contracts provide for arbitration of all claims, and twice attornay P. H. Mages without telling me, took my tou demends for arbitration of claims for part of my losses as I was able to accribe circumstances for being, to the local, Rockland County, H. Y. Court, to prohibit my securing a hearing or any redress of some losses. After hight get to institute legal actions for payments against me, I filed that eventually came before you, March 13,1969 as I intended for a prior to a certain performance of trial of my full problems immediately in the Fall of 1969.

Robert A. W. Carleton, Jr.

UNITED STATES COURT HOUSE NEW YORK, N.Y. 10007

MILTON POLLACK
UNITED STATES DISTRICT JUDGE

15

September 17, 1970

Mr. Robert A. W. Carleton, Jr. 1078 Anderson Avenue Palisade, New Jersey 07024

Dear Sir:

I have your letter of August 26, 1970 in which you recite that you visited my office, unannounced, on August 25, 1970 when I was out of town. You state that you have been urged by your architect to go to me personally to learn what I was told by the attorneys for you and for the defendant and why you were prohibited from securing a federal trial of your claims.

I was reminded by your attorney, Mr. Garbarini, that this matter was disposed of in open court on December 10, 1969. That you took the stand and were questioned concerning the proposed settlement and that you stated that you were in full agreement with the same. That the transcript of the minutes will indicate that the entire settlement was covered at length with you.

Mr. Garbarini also informs me that prior to the appearance in Court on December 10, 1969, he personally reviewed the settlement with you at great length and that you were fully familiar with the details thereof and expressed your full agreement.

Subsequent to the appearance in Court, Mr. Garbarini states, that you had numerous telephone conversations with him and you visited his office on several occasions when you executed the various documents necessary to effectuate the settlement and in addition that you came to his office personally to receive the documents that were due to you.

-2-

Your letter of August 26, 1970 is therefore incomprehensible to me. Perhaps you should tell the architect to whom you refer in your letter of August 26th the circumstances as indicated by Mr. Garbarini by way of refreshing my recollection. The other counsel confirm Mr. Garbarini's recollection in all respects.

So far as this Court is concerned the matter was fully disposed of on the record in open Court. No doubt, you can obtain a copy of the minutes of your testimony on the witness stand in respect of the settlement should you desire to obtain the same.

It would not be in order for me to have a meeting with you.

Very truly yours,

Milton Pollack

Cc: Charles J. Garbarini, Esq. David H. Moses, Esq. Norman Coplan, Esq.

Telephone 201 -WHitney 3-0328

Carleton Brothers Company 1078 ANDERSON AVE.

Palisade, N. J.

GENERAL CONSTRUCTION

Hon. Milton Pollack, Federal District Courthouse, Room 607 H. Foley Square, at Worth Street, New York City. New York, 10007

September 19,1970

Re: Carleton Vs. Bd. of Ed'n., Poarl River, N.Y. 64 Civil 3498

Dear Sir:

Thank you for responding via your September 17,1970 letter regarding the wrongs not redressed, yet, as set forth in my August 26. 1970 letter to you.

Mr. D. H. Moses has explained the law to you and everyone, just once too often, and produces money to try and produce satisfaction for claims, in a pecultur reasoning, while still claiming his defendant not guilty of the claims charged against them.

Mr. C. J. Garbarini assumed presentation of my claims from my initating Attorney, whose circumstances became untenable within this area, in part, because I want my claims given a trial before a jury for the full disclosure of the facts. I was against, and in constant disagreement with Mr. Garbarini's reasoning, when I Learned of his efforts against permitting me to have the claims presented before a jury. During expression of my disagreement with Mr. Garbarini, at your Offices, you, compelled me to go along with Your efforts, that you told me, you had developed with the defendant attorneys from March 13,1969 without my approval.

Mr. Garbarini had pressured me, by stating, after my having waited these many years, now, he would not undertake presentation of my claims and damages, but let you put my matter back on the trial calendar, if I refused your efforts, although, you must not have been knowledgeable concerning the facts concerning my being demaged. And, then, probably get me summoned to trial within thirty days, without an Attorney to present my claims. Every attorney that I talked with, required at least twelve months to properly prepare my matter, and a retainer fee from me; that, I am no longer able to pay, caused by the methods this Board of Education employed to financially destroy me.

EXHIBIT C ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Stated in most simple fact, I signed a contract and tried to rely upon it's terms. However, the Foard of Education never abided by this same contractes terms that they gave to me. And as facts disclose, they had no intention of doing so. Yet, when attacked for damages, seek the legal protection at The Court.

I was told by Mr. Garbarini. that the power intrusted to The Court is in the interest of all, with justice for all.

I would like you to experience the prompt settlement of all my darages. if The Court would temporarily close off all financial school aid for Pearl River. W. Y. and have the Federal Bureau of Investigation open the public files of that Board of Education from 1950 through 1970.

If, as you state, "It would not be in order for me to have a meeting with you."; I am interested to learn, if it would be possible to have some other way of providing me with the redress of damages that I must obtain.

I will look for your reply to this letter, at the carlicat possible moment, with the interest toward my obtaining the redress of the injustices now against me; and, if permitted to stand, become the policy for a public body, probably against all parties, who, under present laws, assume one contract of a multiple contracted development of any of the State or less public bodies toward the public works' construction.

Where am I to look to have my contract inforced, if The Court never has in opportunity to weigh the merits of the claims?

Very truly yours,

Robert A. W. Carleton, Jr.

co: C. J. Garbarini, Esq.

RAWC .Jr.:

Telephone 201 WHitney 3-0328

Carleton Brothers Company 1078 ANDERSON AVE.

Palisade, N. J.

GENERAL CONSTRUCTION

January 28.1972

Commissioner of Insurance & Banking, Department of New Jersey Insurance & Banking, Trenton, New Jersey, 08666

Commissioner:

What can you do to help me be re-dressed for the great wrong doings executed against me by these below mentioned insurance companios?

In 1959 and likewise in 1960, I provided those respective firms, Commercial Insurence Company of Newark, N. J. and Firemens Insurance Company of Newark. N. J., subsequently, my confidential financial statement together with personal indemnities' contractual agreements for each of those firms to procure General Construction Bondings for public school work contract projects. And. I successfully won at public biddings in 1959 and 1960 public school projects within Rockland County, New York, first in the Spring Valley area, and subsequently in Pearl River, New York.

The respective Superintendents' of Schools at each District complained, unknown to me, to those Insurance Firms while conducting other conspiracies unknown to me at the respective times to enable them and their respective School Districts to avoid just payments for extra work costs that they caused and locally authorized me to perform to make correction and complete contract deficencies.

Without any notices to me, these Insurance Firms responded to these false complaints mentioned against my work, and without having any rights to complain concorning my work via their terms of Contracts, those two Superintendents of Schools' obtained assurances without my knowledge from those insurance firms' representatives to give their whole harmtod co-operation to the fullest possible extent to destroy my finacial credits, and assist these School Districts avoid my respective financial claims for \$367,000.00 and \$2,900,000.00 by legal moves to impound all my financial assets, and eventually confiscate my property by pressures of law as of January 27,1970.

EXHIBIT D ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

These insurance firms insisted upon my complying with the torms of my indomnities toward them, but failed to notify me of any complaints about me until after they had me legally secured to defraud me of all my carned extra contracted work expenditures. I will appreciate your adjustment of my situation in the fastest way to restore my business.

co: Commercial Ins. Co. & Firemens Ins. Co.

RAWO . Jr .:

Robert A. W. Carleton, Jr.

EXHIBIT E ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION



State of New Jersey Department of Insurance

201 EAST STATE ST. MAIL BOX 1510 TRENTON 08625

IN REPLYING PLEASE ADDRESS YOUR LETTER TO THE ATTENTION OF THE UNDERSIGNED AND REFER TO OUR FILF NUMBER:

2-C-240

February 25, 1972

Mr. Robert A. W. Carleton, Jr. Carleton Brothers Company 1078 Anderson Avenue Palisade, NJ

Re: Commercial Insurance Company

Dear Mr. Carleton:

Receipt is acknowledged of your letter dated January 28, 1972.

Your problem will receive our attention and we will correspond with you further upon completion of our investigation.

James A. Riley

Principal Investigator

JAR:dc



State of New Jersey DEPARTMENT OF INSURANCE

MAIL BOX 1510 TRENTON 08625

IN REPLYING PLEASE ADDRESS YOUR LETTER TO THE ATTENTION OF THE UNDERSIGNED AND REFER TO OUR FILE NUMBER:

2-C-240

March 14, 1972

Mr. Robert A. W. Carleton, Jr. Carleton Brothers Company 1078 Anderson Avenue Palisade, NJ

Re: Commercial Insurance Co.

Dear Mr. Carleton:

This letter will serve to supplement this writer's earlier correspondence.

Recently this office received a rather lengthy report from Mr. James M. Condon, Secretary of the Continental Insurance Co., advising as to their position in this matter. Basically they state that you were made aware of the transaction as they took place and the circumstances of the handling of this matter were done openly.

At this time we are left with the factual dispute as to exactly what transpired in view of the great length of time and the factual issues involved with this Department it would be certainly an issue for the court to litigate. As an administrative agency, this Department cannot decide questions of law and fact, and if an ultimate impass is reached in regard to a factual dispute, we cannot make that determination necessary to make the determination as to responsibility.

I can only suggest at this time that you discuss this matter with an attorney or bring the case to the courts of proper jurisdiction so that an equitable remedy may be reached.

Yours truly

James A. Riley

Principal Investigator

/ -139

JAR:dc

201 -

Telephone
WHitney 3-0328

Carleton Brothers Co.

1078 ANDERSON AVE. 02,024 Palisade, N. J.

GENERAL CONSTRUCTION

March 22,1972

Principal Investigator,
Department of Insurance.
201 Rast State Street.
P. O. Box 1510.
Trenton, New Jersey, 08625

Re: 2 - C - 240 Commercial Insurance Co.

Dear Mr. Riley:

I appreciate your courtesy and reply via your March 14,1972 letter regarding the above firm.

Would you kindly forward me a copy of the letter and report from Mr. James N. Condon. Seretary of the Continental Insurance Co.?

Your suggestion to me through your last paragraph has my like opinion. My attorney made the same suggestion, but since he had been seriously struck down by a heart attack very recently, he thought I could get some temporary be-operation from your department with a temporary injunction against dommerial Insurance Co.. He has witnessed the whole high handed actions against me by this firm. And, has said to be that they were moving without providing you prior notices and have co-operated in a conspiracy to legally steal your possessions; and they will have to be made to completely reimburse me.

Vory truly yours, Carleton Brothers Company

Robert A. W. Carleton, Jr.

RAMO , Jr .:

EXHIBIT H ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

201 -Tel: 943 - 0828

CARLETON BROTHERS COLPANY 1078 Anderson Avenue. Palisade, New Jersey. 07024

April 13,1972.

Office of the Attorney General, State of New York, 80 Center Street, New York City, New York

RE: Carleton Vs The Continental Corporation

Gentlemen:

0:

Through the legal power of your Office, I, Robert A. W. Carleton, Jr. and/or CARLETON BROTHERS COMPANY of 1078 Inderson Avenue, Palisade, Borough of Fort Lee, Bergon County, New Jersey, 07024, make you, this plea; in my own and Mother's (Julia S. Carleton)

of same address, behalf, to-day;

THAT a logal injunction be established now, and if required, made permanent until full restitution and all carned monies catisfaction be given me from The Continental Corporation, 80 Maiden Land, Tow York City, Now York, 10038, on account of their illegal and deliberate involvements, together with it's subjugated business personnel and firms' complete activities within the performance of their businesses and their realm of kindred insurance, bonding, etc. employment within and throughout your State of New York,

BECAUSE I had earned and was over due and owed Surety bonded suthorized contracts' extra work monies filed in compliance with claims via N. Y. Education Rule 3813 the sum of \$367,641.13 from Remapo Central School District 2, Spring Valley, New York, and the sum of \$2,925,689.00 from Union Free School District 8, Town of

Drangetown, Board of Education at Pearl River, New York.

FOR The Continental Corporation concurrently has comspired as you will see herewith exhibited below, with several unnutherized individuals, reminst my assigned contracted logal rights and obligations in their efforts to finencially destroy me, while an accounte prime construction contractor, logally powerless, and not permitted to be knowledgeable concerning each current projects' factual conditions.

AND, I plea that your injunction exist until our (my Mother and I) confiscated financial resources, negotiable collateral taken from us, the earned contracted monies totally restored, together with removal of all libelous damages against my financial credits, my name, personal business career and character, shall be made to my satisfaction with written proof.

Here after I state and offer the following exhibits:

I.E My trade name, Carleton Prothers Company, has been on file in the County Clerk's Office, Bergen County, Hackensack, New Jersey, since February 1937.

II. - Note that my legal effort has been prohibited re-dress through 64 - CIV 3498 action filed with The United States District Court for the Southern District of New York. Because The Continental Corporation refused to release me money to secure Attorney for my demands.

- 1. The Fidelity & Casualty Company of New York to Carleton, dated Oct. 16,1961 claimed contract defaults;
 See Carleton reply to American Fore Loyalty Group, Oct. 20,1961.
- 2. The Fidelity & Casualty Company of New York to Mrs. Julia S. Carleton dated Oct. 16,1961 claim contract defaults and her reply to American Fore Loyalty Group, Oct. 20,1961.
- 3. The Fidelity & Casualty Company of New York to Carleton, dated Oct. 19,1961 Contract retainage monies release forms.
- 4. Carleton's Claims Breach of Contract, North Monsey (Oakwood) School, dated, October 19,1961.
- 5. Carleton's Claims Breach of Contract, North Hillcrest School. 6. Carleton's Claims Breach of Contract, Monsey School Addition both dated, October 19,1961.
- 7. Carleton's Claim for Interference with Contract, North Monsey. (Oakwood) School, October 19,1961.
- 8. Carleton's Claim for Interference with Contract, North Hillorest School, October 19,1961.
- 9. Carleton's claims for extra work remuneration each filed in compliance with N.Y. Rule 3313 against Contract, North Monsey (Onknood) School, Oct. 19,1961.

10. Carleton's claims for extra work remomeration each filed in coapliance with W.Y. Rule 3618 against Contract, North Hillerest School, Oct. 19,1961.

EXHIBIT H ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

11. Letter, American Fore Loyalty Group, to the late Jerome B. Tobia Esq. - contract funds Release Forms, dated November 17,1961;

s. -Detter Nov. 17,1361 to Board of Education, (Spring Valley)
stating Carleton's Claim of COMPLETED CONTRACT, North Monsey
(Oakgood) School.

b. - Letter Nov. 17,1961 (name as item 'a') North Hillcrest School
c. - Letter Nov. 17,1961 (nimilar to items 'a' & 'b') Addition

to Monsey School, completed and 100% used from Feb. 6,1960.

12. Letter to Scard of Magestian (Spring Valley, X.Y.) Consent to FINAL PAYMENT, Addition to Monsey School, Dec. 5,1961.

13. Architect's Statement of Contract Status - to Carleton Brothers Company, North Monsey (Dakmood) School Project 865 and dated.

14. Similar to Item 12, only regarding North Hillorest School, School Project 891 also dated, Nov. 21,1961.

- 15. Architect (Sherwood, Mills & Smith) Dec. 8.1061 letter of refugal to authorize payment of any money, either retained as agreed via per contracts or the authorized carned extra contract work also for costs incurred by Board of Education (Spring Valley) for deliberate delayed operations at all their Construction Contract Sites.
- 16. Carleton's letter, Dec. 8,1961 reply to NEW List (punch) of claimed faults from Board of Education (Spring Valley) dated.

 Abv. 6,1961 to deay payment for all completed contracts, long past due and owed to Carleton Brothers Company.

17. Late Attorney's (Jerome B. Tobias) letter. Dec. 27,1061 via Certified U.3. Hail to Bourd of Education (Spring Valley?W.Y.) demanding payments for all sompleted school contracts, and then, occupied for 100% use 1 year and damaged by school use.

18. February 16.1962 - Legal Motions to try to secure monies due from Board of Education (Spring Valley, N. Y.). Ramano Central School District 2 for their 3 completed school construction projects; Carleton was forced to compromise monies due by new threats via representative from The American Force Loyalty Group, against Carleton to take only monice the Board was willing to settle out to Carleton Brothers Company.

When Carleton consulted and was advised to withhold Federal Taxes due upon paid voges to have the co-operation from the Internal Revenue Department and get them to file their levies to compel some monies to be paid out, it was accomplished on March 22,1962 from Board of Education, Spring Valley, N. Y.

19. Unknown to Carleton, American Fore Loyalty Group representative has begun to conspire with Board of Education, Union Free School District 8, Town of Orangetown, Pearl River, New York where they had furnished Carleton Brothers Company another surety bond for the General Construction Contract Work, Project 296, new High School - Pearl River - they were violating all terms of contracts;

The Board of Education, Architect's student unlicensed first experience with Contract Public Work representative (testimony taken under onth at Exemination Before Trial - on file at the Board of Education, Pearl River, N. Y. - only hired one month prior to date of signing construction work contracts, Lugust 9, 1960) provided the American Institute of Architects' 1958 forms of contract, that they never contemplated to abide bye, SME exhibits below:

a. Sec - Pearl River High School, Project 596. Specifications',
"Instructions to Bidders" Page 1 B.J of 5, paragraph 'O', subscotion 1:

"Supplementary General Conditions" Page 1.1 of 17, paragraph 1.04; and - "American Institute of Architects Form," signed Contract Dated,

August 9,1960,
together with. "The Ceneral Conditions of the Contract for the Conctruction of Euclidings", Especially note violations of all
terms stated within Articles 2, 1, 3, 11, 15, 16, 18, 31, 34,
38, 39 and 40.

see, Carleton's filed contemplated schedule of Site Brection,

b. See correspondence, January 8,1960 from Architect to Superintendent of Schools. Edward C. Manuing, note part 4 7; B 1 through 3; and D 1 through 10 - procured through pretrial discovery in records at Board of Education, Pearl River, Mce York,

EXHIBIT H ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

- 19 c. See Architect's Memorandum to Md. O. Manning. Sup't. of Schools. Written by Charlie Estee, deted 29, July 1960 Qualifying Carleton Brothers Company to be awarded Prime General Construction Work Contract for new Pearl River High School, Project 396.
- 19 d. Architect's August 3,1960 letter, recommendations for Contracts.
- 19 c. Architect's Memorandum August 20,1960 page 3, paragraph H 1, violates contract's Articles 38 and 39, Carleton protests in vain.
- 19 f. Architect's Sept. 8,1960 letter to Ed. C. Manning, stating Site Water Problems.

 Prior to Contracting Construction Work. Board of Education obligated thomselves to Architect to resolve all water problems connected with their Site minutes of meetings of Board of Education from January 1,1958 through January 1,1964.
- 19 g. Architect's Espt. 8,1960 letter not available site access.
- 19 h. September 24,1960 Contract Extra Site Water Work award to Carleton Brothers Company,
- 19 i. Cot. 26,1960 site progress work report to Board of Education,
- 19 J. May 3.1962 site water letter to Mr. Paul Goldman.
- 19 k. April 19,1961 Regular Meeting Minutes extract delayed the initial Prime Heating Contractor's required adjustment to start work, stated due August 22,1960.

EXHIBIT H ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

- July 19,1961 extract from Hinutes, Board of Education job work progress interference by Olerk of Works caused Labor Boycott
- m. Oct. 26,1961 extract from Minutes, Board of Education Job site Strike against Plumber & Honting Prime Contractors probibited contract progress to Carleton Brothers Co. - costly .
- Nov. 22,1961 extract from Minutes, Board of Education says Carloton's Willwork Completed Materials wars ready so scheduled. not delivered to fite, causes, Owner's contract interferences and lack of capable Architectural Project Site Supervisions,
- o. Extract from Architect Bill Coudill's letter, Jonnery 29,1962 19 to 3d. C. Manning, Supt. of Schools, see paragraph 2, 1tom 3 edvising legal fights and damaging Carloton Brothers Company. Prime Zesting Contractor's Surety Was never obliged to provide a new officient substitute heating contracting firm to continue defaulted work, see Board of Education settlement on file, U. S. Bankruptcy Court, Newstr. New Jersey, December 1954.
- 19 August 16,1962 letter from Board of Education's Attorney, Marshall Roomey's relations with The Continental Corporation's surety provided by Carleton Brothers Company efforts to financially
- 19 Q. August 20,1962 letter from Board delaying Carleton,
- 19 r. Hovemoer 19,1962 Promissory note negotiated against Carleton by Board of Zaucation and Surety Company of The Continental Corporation to save monies for Board of Education and further demage Carleton Brothers Company,
- 19 2. May 6,1964 effort by Carleton to resort to Contract's Terms for Arbitration against Board of Education - prohibited,
 - Note: Officy, Robert A. W. Carleton, Jr. signed the Release Force ! upon him, dated January 21,1970, and not Julia S. Carleton, who

EXHIBIT H ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

- That, Carleton's surety had filed suit in Superior Court of New Jersey, Essex County, Docket C 2153 62.
- That, Carleton's surety siezed all possible negotiable collatoral together with tendered Board of Education, Pearl River, New York, check No. 1648Z in sum of \$100,000.00, and the check tendered from Architect in sum of \$25,000.00 was wholly taken by Carleton's substitute attorney.

Remarks from Carleton to try and get his attorney to secure the Trial of Damages before The Court. U. S. District Court for the Southern District of New York.

201

I am left with terrible debts that I am unable to pay at this time as the direct result of several people comparing against my legal contract interests and assigned rights.

These Boards of Education wanted to hide project costs from their tax payers without regard for contractural obligations.

S. Carleton and myself.

Robert A. W. Carleton, Jr.

EXHIBIT I ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

JARVIS, PILZ, BUCKLEY & TREACY

ATTORNEYS AND COUNSELLORS AT LAW

EMIL V. PILZ RUBERT B. JARVIS HOSE-HOSE CARL E. BUCKLEY THOMAS R. TRPACY EUGENE BCHAFFEL GEORGE F. MACKEY EMANUEL F. ABBATE

RONALD J. THOMAS BRUGE J. BERGMAN THOMAS W. MOORE III PETER G. BUCKLEY IIS BROADWAY

(212) 227-8150

CABLE ADDRESS: JARPILZ

May 8, 1972

Mr. Robert A. W. Carleton, Jr. 1078 Anderson Avenue Palisade, New Jersey

Dear Mr. Carleton:

I was very happy and proud that the son of my dear deceased friend and client, your father, "Bob" Carleton, through my friends and clients, Mason & Hanger-Silas Mason Co., Inc., asked to talk and consult with me respecting your legal troubles going back to 1961, 1958 and 1959.

When you explained your situation, which took all of the morning of Friday, May 5, 1972, and at which meeting I had one of my young partners, Eugene Schaffel present, I was very depressed at what you stated. You had previously employed at least two lawyers, one of whom, you stated, attended college with you.

Then after listening to you completely, I asked you to leave whatever papers and documents you had with me for my inspection, examination and consideration and that of Mr. Schaffel. You did so. I have examined them and so has my partner, Mr. Schaffel. I have, as a result of the study thereof, come to the conclusion that neither I nor anyone in my firm can be able to take your case. As your father would have done, you should have talked and received proper advice from me back in 1958, 1959 and 1961. This is now 1972, or at least 11 to 14 years later.

Accordingly, my secretary shall have your papers and files ready to deliver them back to you whenever you desire to pick them back.

You stated at that meeting of May 5, 1972, that you would pay me and my firm for the time used in connection with your matters. Out of respect for your father, I shall charge nothing for our time, or otherwise.

Sincerely and deeply regretfully,

-148- und

EVP:am

EXHIBIT J ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Carleton Brothers Company 1078 ANDERSON AVE. Telephone 201 -

Palisade, N. J. 07024

WHitney 3-0328

Room 607 H.

GENERAL CONSTRUCTION

Hon. Milton Pollock.

United States Court House,

Foley Square.

New York City, New York, 10007

May 11.1972

Doar Sir:

This letter is forwarded via return receipt certified U. S. Mail No. 952525, rolative to my file matter 64 CIV 2498.

I want, and always expected my matter 64 CIV 3498 only heard during a Federal Court Trial, profesably without a Jury; and never consented to any other solution other than by personal threats upon ne by my attorney and Surety Company. And, when my them, attorney, after six menths past my matter's call to Trial, March 13,1969, told me that the Defendants were offering \$100,000.00; it appeared to be the start toward a favorable sign for my recovery of \$2,900,000.00 damagos, that I have to date suctained, together with no caployment and frustations.

You have received letters from me dated, August 4,1969, August 26,1970 and September 19,1970. And I have yours to me dated September 17,1970.

Conovor, I still want my Matter 64 CTV 3498 tried before a Foderal Judge, and, request of you, now, that this plea, may result in the long cought trial. For, you must never have learned, that I seek damages for total destruction of my business, my business career, financial credit and confidention of my property, as well as my Mother's property.

In essence, the Board of Education offered their signed formal four prime public construction contracts, guaranteed 100% by each with coparate performance bonds, all executed August 9,1960. But, they never had intended to abade by their contracts' binding written terms. Draminations of the Board of Education's public records uncovered to me, in addition to, examinations before trial, of specifically named personnel, that efforts engaged in misrepresentations to save money, contrary to all Now York State Laws that pertain to physical execution of Public Works, always provailled.

Those Toxas Architects utilized this Project to construct their first school design within the North Eastern United States, via a very low suggested financial cost proposed budget allotment, to induce their school design's erection, for professional establishment in How York State.

> Vory truly yours, Carleton Brothers Company Tobert a. W. Caletone

Robert A. W. Carleton, Jr.

EXHIBIT K ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, NEW YORK 10007

MILTON POLLACK

May 12, 1972

Mr. Robert A. W. Carleton, Jr. 1078 Anderson Avenue Palisade, N.J. 07024

RE: Robert A. W. Carleton, Jr. v. Union Free School District No. 8 et al 64 CIV. 3498(MP)

Dear Mr. Carleton:

Please refer to my letter of September 17, 1970 which adequately answers yours of May 11, 1972.

dery truly yours

Milton Pollack

Cc: Charles J. Garbarini, Esq. David H. Moses, Esq. Norman Coplan, Esq. EXHIBIT L ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Telephone 201 -WHitney 3-0328

Carleton Brothers Company 1078 ANDERSON AVE.

GENERAL CONSTRUCTION

Palisade, N. J. 07024

May 13,1972

Hon. Milton Pollack. Room 607 H. United States Court House. Foley Square, New York City, New York 10007

> Re: Robert A. W. Carleton, Jr. Va Union Free School District No. 8 et al. 64 CIV 3498

Dear Sir:

In response to your letters September 17,2970 and May 12,1972 I can only state that I appeared before you through duress by the result of statements from my then attorney, Charles J. Carbarini and his retions that aroused my Surety Company in May 1969 all against my very definite and repeated wishes. I was never in any agreement with Mr. Garbarini's sotions with respect to my Matter, but, the Surety Company would not financially assist me to occure enother attorney. The Surety Company had negoiated without my prior knowledge in with the attorney and superintendent of schools at Union Free School District Wo. 8, at Pearl River, New York to finencially destroy me toward saving them unexpected costs for their neglegonoes.

Mr. Garbarini never informed me what were the risks that he was obliging me to ondure because of him forcing me to appear before you.

I must insidet upon logal roliof as a citizen and War Veteres and will not let this injustice proveil.

> Very truly yours. Carleton Brothers Company

Robert A. W. Carleton, Ur.

RAWO. Jr.: Certified Mail 952548 EXHIBIT M ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Telephone 201 -WHitney 3-0328

Carleton Brothers Company 1078 ANDERSON AVE.

Palisade, N. J.

GENERAL CONSTRUCTION

07024

Hon. Milton Pollack. Room GOTH United States Court House. Foley Square.

May 19,1972

New York City, New York 10007 Re: Robert A. W. Carleton Jr. Vs Union Free School District No. 8 et al. 64 GIV 3498

Doar Sir:

In addition to my letter on May 13,1972, I believe, if you know that I discovered copies of correspondence six months prior to The Owners's advertising for public proposals, based upon use of their offered and anticipated documents for their school's construction project, stating not to abide by those formal written terms. You might reason why, serious economic demage was to be assured any involved contractor. It did not make any difference who won and was awarded those prime contracts. Surely, New York Education Rule's 5815 limit to minety days subsequent to an occurance of fact does not liberate or defend This Board of Education for their actions.

Then, there was no qualified person knowledgeable about execution of New York State Laws for development of public works on this project representing the Architect, during the specific duration of contract erection time. The Architect had hired a student to represent him, one month prior to accepting public construction proposals for this project. His first experience on public works in architect capacity.

The Attorney for the School Poard did nothing about urging or supervising all circumstances portaining to physical and logal readiness, for the construction of the public work. How is any contractor to learn of these negligent conditions within the allowable limits of W. Y. Rula 3813?

The selected heating contractor was preferred over the low bidder. He poste 100% performance bond to stilde by their Contract. He was bankrupt, unable to perform his initial contracted work. Hover did Buyone during my often repeated vertal, to avoid liebel, requests leals upon the 100% performance boad from the heating contractor to remove and substitute a new Heating Prime Sontractor; one that would be properly qualified and always capable of the contract's compliance. I filed a claim as per 3013 and The School Board legally ant and rejected my right against the Heating Contractor.

Mr. Gardarini, my Attornoy, preferred to overlook these above facts to get a fee, and, save you the trouble to sit out a trial, all against my wishes. Er. Garbarini did not initiate matter 64 OIV 3499.

EXHIBIT M ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974- IN SUPPORT OF MOTION

I had twice requested the use of The Contract's binding arbitration terms to procure recovery of partial damages, prior to seeking my relief through a Foderal Court Trial. And, Mr. Moses took the arbitration papers before the corrupt Rockland County Court friend to stay all arbitration because he did not want to submit to the arbitration.

How could you possibly reconcile that \$125,000.00, none allowed me. wiped out my \$2,900,000.00 lose? In addition, my surety company as their reward for keeping me illegally in a financial straight jacket, were allowed to conficate my Mother's and my negotiable securotics; that they had illegally grabbed from us. Robert A. W. Carleton, JR

co: Charles J. Garbarini

Contided Nail 952537

EXHIBIT N ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

retephone 201 -WHitney 3-0328

Carleton Brothers Company 1078 ANDERSON AVE.

Palisade, N. J.

GENERAL CONSTRUCTION

07024

Hon. Clifford P. Case. 191 West Milton Avenue, Rahway, Mew Jersey, 07065

May 31.1972

Dear Senator:

Since 1936, I have performed many public works' contracts as the General Contractor, in New Jersey, New York, Connecticut and Rhode Island.

Kindly enable me, through your good offices, to secure a non-jury United States Court Trial for the matter I have filed in the Southern District United States Court of New York, 64 CIV 3498.

My Matter has been subjected to great legal harasement contrived through the Defendants to forever prohibit my procuring the Trial that I went, in order to secure rollief and nothing substituted for a triel of my Matter will be satisfactory to ma.

The Case Matter, so my then attorney, Charles J. Carbarini, told me, was to have begun to be tried, March 13,1969. Ee was not at all prepared with full knowledge of my demages to represent me to recover the relief I seek through 64 CIV 3498. He preferred to rely upon the attitude and distortions from the defense against my wishes and in turn herass me to secure a fee and try to discharge my Matter for the benefit of the Defendants and my further distruction.

Instead. Mr. Garberini as you can read in the copies of my enclosed letters of August 4,1969, Lugust 26,1970, Judgess Sept. 17,1970. Sept. 19,1970, May 11,1972, Judgo's May 12,1972 g May 13,1972 and May 19,1972 knew nothing about my Cose Matter.

The Judge, Milton Pollack, has always refused to let me speak in my own behalf. Because, I might express facts, contrary to my Attorney's interest, and refuses to arrange that The Hatter be Trica before The Court. For, he told me that he had a hand in procuring the very smell sum of \$125,000.00 from The Pofendants, from Merch 1969 through January 1970 without conculting me to lears of my dissatisfaction for his offort; end, could not have factual inculode of my Matter from my Attorney. My Attorney during that time aid everything possible to exert fear and personal pressure upon me to force me into a Federal Courtroom in January 1970 to submit to further damage.

EXHIBIT N ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

I also wish time to secure an Attorney to represent me, and have 64 CIV 3498 only given a Mon-Jury Federal Trial, not withstanding all arguments and legal objections against my procuring the Trial that I want.

I hold written substantiations for all that I have written in the enclosed letters.

Certified Return Mail
95 2538

Very traly yours,
Robert A. W. Jarleton, Jr.

RANG. Jr .:

CLIFFORD P. CASE

COMMITTEES:
APPROPRIATIONS
FOREIGN RELATIONS
JOINT COMMITTEE ON
CONGRESSIONAL OPERATIONS

United States Senate

WASHINGTON, D.C. 20510

June 6, 1972

Reid 12

Mr. Robert A. W. Carleton, Jr. Carleton Brothers Company 1078 Anderson Avenue Palisade, N. J. 07024

Dear Mr. Carleton:

This will acknowledge your recent letter and the attachments. I understand your feelings in the matter.

It has always been my policy not to interfere in the judicial process, however, since matters before the courts are outside the jurisdiction of a federal legislator. In the circumstance, any attempt to intervene would be more likely to harm rather than help.

I do hope you understand.

Sincerely,

Clifford P. Case

U.S. Senator

CPC/ef

Telephone 201 -WHitney 3-0328

Carleton Brothers Company 1078 ANDERSON AVE.

GENERAL CONSTRUCTION

Palisade, N. J. 07024

Presiding Judge for The United States Court. Southorn District of Now York. United States Courthouse. Manhattan, New York City, New York 10007

June 16,1972

Your Honor:

Kindly inspect and consider all of these following series of programed efforts to deceive, that have caused me demages only a fair Trial can reveal and afford relief.

I have been legally harassed during twolve years, and demaged by more than \$2,900,000.00. The actual costs are on file in your United States Court File on 23 typewritten legal length pages.

The contract time was proposed and estimated to complete all construction for the new high school, Pearl River, New York within 13 calender months. But, through deliberate delays of the contract. and perpetual unauthorized interference The Project lasted more then 3 years.

The prime contractor for Heating Work etc.. Charles W. Ackerman. Inc.. could not start working until April 18,1961, 9 months letc. see. Minutes of the Board of Education, April 18,1961, enclosed. Then. this heating firm was not financially capable to progress and porform their contracted work, and was never removed and substituted. The Doord of Education during January 1962 voted to refuse me to seek coneges against this Heating Contractor through contract towns Arbitaction. While all know and admitted work failures of this firm. All this attitude was contrary to our General Conditions of Contracts, empressed in Article 18 pages 4 and 5; 31 pages 7; 25 pages 8; 28, 39 and 40 pages 9. Also note Board of Education's Kinutes of Meetings April 19,1961; July 18 & 19,1961 Beyestt; Cotober 26,1961 Strikes; extract from the January 29,1962 letter, item 3 of second paragraph to Superintendent of Schools from "Bill Caudill" of Architect, Caudill, Resolutioned Scott propare for court fights.

Instead of the Board of Education proceeding against the Ecoting Pirm's contract porformance Dand for a new capable Contractor, they. unknown to me from either my Suroty Company or the Board of Education had arranged my total finencial destruction without just cauce.

I first learned that I had no responsible Contract Emporvisory Rollef Authority (architect) in January 1963 whom my appoint for contract arbitration was rejected by the Board of Education. The whole Contract with all it's legal provisions were in violation.

The Board of Education continued heating contractor, Charles W. /okernan, Inc., even through bankrupt cottlemente in Desember 1964, see file in U. S. Conkruptoy Court at Newerk, How Jersoy.

Has the logal concept that a "Contract Means What it States" been abandoned before a United States Court?

A 100% contract Performance Bond was delivered August 9,1960 when the Formal Contracts were signed with the Board of Education; see accompanying Contract Specification, volume 2, Notice to Bidders, Instructions to Bidders,

pages, 1B. 1 of 5, paragraphs 3 1, 2 & 3;

1B. 2 of 5. paragraph F:

1B. 3 of 5, paragraph K; N; O item 1;

General Construction Proposal.
page, GCP 5 of 3, paragraph "Time of Completion"; COP 6 of 6, second paragraph.

Electrical Work Proposal. page. HTP 3 of 3, paragraph "Time of Completion" etc.,

Plumbing Work Proposal. page. PWP 3 of 3, paragraph "Time of Completion" etc..

Air Conditioning, Heating, Ventilation & Exhaust Work Proposal, page. A C H V E W P 3 of 4, paragraph "Time of Completion" etc.:

SUPPLEMENTARY OFFICEAL CONDITIONS.

paragraphs 1.02: 1.04 A. B: 1.05 item A2. C3. D. E. & G: 1.07; 1.10 Bl. B6; 1.13 D: 1.15; 1.16; 1.17; 1.20; 1.22 A, B & O; 1.24; 1.25; 1.26; 1.27 A; 1.28: 1.29 A. B & C:

Er. Merchall Roomoy, Attornoy, and, Dr. Edward C. Manning. Experintendent of Schools, respectively both representing the Board of Education at Pearl River, New York, informed the present four Project construction division, prime Contractors, signing Contracts August 9,1960; while I hand delivered then, my typewritten e ticipated Project's schoduled progress of work on Site, as per Contract; we were then verbally informed and introduced to Architect, Richard R. Sawicki, end told, he would expervise and co-ordinate The Project's Site erection, for the frehitect's Office at Houston, Toxas, from their local Office at Stumford, Connecticut.

However, here I must refer you to the 8 January 1960 letter to Dr. Elward C. Monning, from the Architect, paragraphs B. C & D that electly indicates utter disregard for all the above contract writton oripulations referenced herein.

1. Mext, the accompanying copy of August 5,1960 "confidential" to William Caudill from Dr. Edward C. Kanning;

continued sheet 3.

EXHIBIT P ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

- The top paragraph of correspondence from Board of Education's 2. file dated as late as July 18,1963.
- The 1 through 14 "DUTIES and RESPONSIBILITIES of THE CLERK-of-WORKS. 3.
- The 22 August 1960 Architect Momorandum, page 3 paragraph H 1.. 4.
- Architect's 8 September 1960 letter water problem. 5.
- Authorization in Excavation, and Signed Order 24 September 1960. 6.
- Digest of Site conditions, October 26,1960. 7.
- Job Holdups, enurerating only some circumstances from 17 October 8. 1960 to Oct. 23,1961, again refer to Minutes of Boord of Education 9.
- Letter to Paul Coldman from Board of Ed'n. May 3,1962 water.
- 10. Architect's letter to Dr. Marning Soptember 8,1960 - water.
- Architect's letter to Dr. Manning 20 March 1965 some site delays. 11.
- 12. Architect's letter to B'd. of Md'n. 24 July 1963 grass; these Contract Work Seeding Specifications were physically proved not catisfactory by strict adherence, during 1961, 1962 & 1965.
- Inter-office Cet. 21,1963 communication to Carleton's Bonding L3. Company and B'd. of Ed'n. without notice to Carleton.
- B'd. of Ed'n.'s Meeting Minutes, regards Carleton's Nov. 15,1961 request for completed Contract Millwork furnishings that had to be sent into Storage Facilities, plumbing and heating work not sufficiently done to start enclosing all 5 buildings,
- 15. Inter-office 9 April 1962 Sup't. of Schools to B'd. of Ed'n. to release payment for Millwork see above No. 14.
- Note Carleton's Contract delivery order, exterior windows and for frames stopped Site entry July 18 & 19, 1961, Roycott caused by 16.

There was no Architect as Contract Terms & Conditions required at construction site co-ordinating and supervising progress of work. The Architect in Houston, Toxas had hired Richard R. Sculeki during Jane 1950; a student in training for architecture, by Sawicki's own admiccio under oath while being Examined Before Trial.

Judge Wilton Polisck called my Matter 64 CIV 3498 for Trial March 13,1969. My former Attorney was not prepared for Trial. And preferred to be influenced by Defendant Attorney, that New York Education Rule 3813 had sole jurisdiction of construction work

continued sheet 4.

EXHIBIT P ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Mr. Sam. J. Berardino and Mr. Charles J. Garbarini from my former Attorney. Carbarini, Scher, Eccioce & Berardino, began to threaten me with examples of hopeless irrelayant situations, disregarded my wishes and visited my Bonding Company to build-up added personal prossure, see:

1. May 9,1969 letter from Continental Insurance Companies

to me and My Mother (88 years old then),

Bonding Company's letter to one of 4 banks, May 8,1969.

3. Bank letter to My Mother, May 12,1969. These Surety's and Bank's letters were repeated from each, and caused My Mother to take seriously sick.

There, the Judge told no to say nothing in behalf of myself; he know the lawyers for both sides.

Then in Jenuary 1970 I was told to expect to be on Trial and without instructions or knowledge what to expect arrived into a court room. I was immediately surprised to observe how partial Judge Pollack and my Attorney were toward my Bonding Company and the Ecfordant. Then against my better judgement for relief of pressures upon me, to agree to let my Mother's and my own negotiable scenretics to be taken from us, a demaging not to us, in the sum of \$250,000.00 without any fair Trial to the Bonding Company, plus \$100.000.00 without any fair Trial to the Bonding Company, plus \$100.000.00 the Board of Education paid out to me for them; and the frehitect to jointly pay out \$25,000.00 to me and my Attorney, who took that money without a trial. I do not understand why or how \$125.000.00 could calindy my losses of more than \$2.000.000.00 and heary. These facts presented by this letter. I wish explaination with proofs.

Without my knowledge Juring actual stated Contracted Time. somebody connected with Pearl River. W. W.. Board of Education must have without just cause started negotiations for money with my Boading Company; who was then represented by lawyer Edward A. Shure. Hr. Shure work against my interests and very closely with Mr. Mooney as I tell at the ond of this plas.

August 25,1970 I wrote Judge Polinel to get my Matter 64 OIV 3000 into a none Jury fair dried to reduced my total denegre that I believe I am entitled. He wrote me his refusal, yet, he could never have known or been told the facts shown you by these accompanying papers. He has been misrepresented my matter of Dunges.

On Toycober 19,1962. Mr. Mdward A. Thure and Mr. Marchall Rooney forecably entered my home in New Jersey at supper time, to get to my sick Mother's bedside, before she could get advice from

continued sheet 5.

EXHIBIT P ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

her Attorney, in order for them to secure a less of money for the continually being horassed progress of construction at the new high school at Pearl River, New York.

My home personal family relations were thereby destroyed by Mr. Mure's sud Mr. Rooney's illegal quest for some more construction money.

Doos New York State's Education Law 3813 protect the Contenental Insurance Companies and the Board of Education at Pearl River, New York for this illegal entry of my home for a financial lonn?

There do I go to get relief for my losses contracted by the Central Construction Work Contract to erect the new high school at Pourl River, New York? We have bone local rights that we thought we rightfully must rely upon The Court to preserve.

Respectfully yours, Carleton Brothers Company

Robert A. W. Carleton, Jr.

RAWO . Jr .:

EXHIBIT Q ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT

CHAMBERS OF
JUDGE MURRAY I. GURFEIN
UNITED STATES COURT HOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

June 20, 1972

Mr. Robert A. W. Carleton, Jr. Carleton Bros. Co. 1078 Anderson Avenue Palisade, N.J. 07024

Dear Mr. Carleton:

I have read your letter of June 16 which I now return with its enclosures. Through independent inquiry I have learned that your earlier case is in all respects terminated and that nothing concerning you is pending before this Court.

If you should wish to commence an action based on any of the allegations contained in your letter, I recommend that you contact either a lawyer or the Pro Se Clerk of this Court in Room615-B. Thus, you can be aided in presenting any claim you may have by means of the proper procedure.

Very truly yours,

U.S.D.J.

1kr Encl. EXHIBIT R ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

201 -

Telephone
WHitney 3-0328

Carleton Brothers Co.

GENERAL CONSTRUCTION

1078 ANDERSON AVE. Palisade, N. J.

June 23,1972

Eugene Schaffel, Esq., Jarvis, Pilz, Buckley & Treacy, 115 Broadway, New York City, New York, 10006

Doar Mr. Schaffel:

I would appreciate your opinion. Do I have a good course of action against the lawyer for the Pearl River. T. Y. Board of Taucation? I would like to re-dress the losses that I have sustained, probably in the federal court in Manhattan.

I been the victim of correct practices: Since nothing of all my contract's terms were permitted to be honored. Ind Nother was forced into signing a 1500,000.00 toan from a sick bed without prior change to get her Attorney's counsel in order for Mr. Rooney to avoid his Kourd of Mucation to increase their debts to pay their signed authorized extra work orders for excavation work in mud and water, etc. that they never paid. I have enclosed Mr. Rooney's Affidavit.

This arbitration is against the prime plumbing work contractor. He stated in examination before trial conference, that he was not oblined to follow his part of the work in order to produce the Project as scheduled. He only took his instructions from the Saara of Education's site representative. Clerk-of the Works. He refused to have his selected member of the 1-1 of Architect's arbitration panel present. When the chairman of the arbitration panel set together with my panel representative in June 1970 for two days hearings leadly exceeded with a court stenographer. This chairman has been exceeded with a court stenographer. This chairman has been exceeded with a court stenographer. This chairman has been actions and jurisdiction in conducting the arbitration between

Would you handle this problem for me?

Thank you for your courtesy and interest in me.

Sincerely.

Carlo S

Robert A. W. Carloton, Jr.

PARC .Jr .:

-163-

EXHIBIT S ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Telephone 201 -WHitney 3-0328

Carleton Brothers Company 1078 ANDERSON AVE.

GENERAL CONSTRUCTION

Palisade, N. J. 07024

United States Supreme Court, United States Supreme Court House Washington. D. O.

RECEIVED JUL 1 1 19/2 OFFICE OF THE CLERK SUPPLIME COURT, U.S.

July 3,1972

Gentlemen:

I, Robert A. W. Carleton, Jr., an individual with a duly filed trade name, doing business under the firm name and style of Carleton Brothers Company, from the same address as written here on this, my letterhead.

In November 1964 I initiated as Plaintif, my claims for damages in the United States Court, Southern District of New York State to be resolved only through a trial by jury as Matter 64 CIV 3498.

Has a United States District Court any right to waive trial for my Matter to come before it, and oblige me to have my Matter disposed of by any other method prior to his personal receipt of my personal expressed written consent to agree to waive the trial procedure proferred?

Your early reply will be very much approciated.

Very truly yours, Carleton Brothers Company de: Hon. Milton Pollack U.S. Courthouse, N. Z.C. - Tobert Q. W. Carlet

Robert A. W. Carleton, Jr.

Charles J. Garbarini, Esq. 500 Fifth Ave, N.Y.C.

RANC, Jr .:

Dear Mr. Carleton:

I regret to have to inform you that this Court cannot advise you in your matter while it is pending in another court, and we do not answer questions on the basis of correspondence.

201 -

Telephone WHitney 3-0328

Carleton Brothers Co.

1078 ANDERSON AVE. Palisade, N. J.

1

GENERAL CONSTRUCTION

July 17,1972

Hon. Milton Pollack. United States Court House. Poley Equare. How York City. New York, 10007

No: Matter 64 CIV 3498

Your Honor:

Zuly 5,1972, that Matter 64 CTV 2450 for all interest and purpose is before the Court for litigation.

I would appreciate the opportunity for time to scare for nyeelf, a new attorney and nequaint him with my claims in attorney and nequaint him with my claims in attorneys in my behalf.

third degree testion from thereh 12 2069 the most terrible will present you proof of 1t. If you request it of me. /nd. from the attorneys from both sides intert was harm to me cash in their eva interest. It that time I help weekly slone, before, as I could only secure. a bired court, and invested beyond all belief.

The Percentage bas too office used the repetition of subject matter, for level motion delays throughout these post several years. I would convociate that in this latter 64 GIV 5403, now, no further resort to each ocvies be permitted in befold of undertoying at the resconsible carliest possible time, the concept of fair trial of my Matter 64 CIV 5483. As 7. 7. Thurstion have 3315 refer offers lead protection for the cotions I claim temages against the For Miver. W. Y. Board of Greation.

cc: Garles J. Carbariai

Very truly yours,

Robert A. W. Carleton, Jr.

RAUC .Jr .:

EXHIBIT U ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK UNITED STATES COURT HOUSE NEW YORK, NEW YORK 10007

MILTON POLLACK

July 19, 1972

Mr. Robert A. W. Carleton, Jr. 1078 Anderson Avenue Palisade, N.J. **0**7024

RE: Robert A. W. Carleton, Jr. v. Union Free School District No. 8 et al 64 Civ. 3498 (MP)

Dear Sir:

Your letter to Judge Pollack dated July 17, 1972 has been received. As you were previously advised, this matter was concluded on the record in open court on December 10, 1969 at which time you took the witness stand and testified in support and in acceptance of the settlement and stated you were in full agreement with the same. You are referred to the letter from these Chambers to you dated September 17, 1970.

Very bruly yours,

Rose A. Lanci Secretary to

Judge Milton Pollack

cc: Charles J. Garbarini, Esq. 500 Fifth Avenue
New York, N.Y. 10036

EXHIBIT W ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Telephone 201 -WHitney 3-0328

Carleton Brothers Company

GENERAL CONSTRUCTION

1078 ANDERSON AVE. Palisade, N. J. 07024

August 24,1972

Hon. Milton Pollack. United States Court House. Foley Square. New York City. New York, 10007

Re: Matter 64 CIV 3498

Your Honor:

When may I expect the courtesy of your written reply to my letter of July 27.1972?

I thought that the letter indicated the perjury presented to you regarding 64 CIV 3498 when your Court denied my opportunity for any trial.

It would help me to better understand why you would everlook the fact that my Bonding Company scalated the Board of Education at Pearl River. New York with extortion of money from me. while refusing me to exercise the contract that they signed and issued me. I hardly believe you would permit injustice to preveil upon receipt of the evidence now in your possession.

Very truly yours. Took Q. W. Callety Jr. Robert S. V. Carleton. Jr. WHitney 3-0328

:

Telephone 201 - Carleton Brothers Company 1078 ANDERSON AVE.

GENERAL CONSTRUCTION

Chief Justice Warren E. Burger, Supreme Court House.

August 31,1972

Washington, D. C.

Re: Matter 64 CIV 3498 United States District Court Southern District of New York

Honorable Mr. Burger:

I ame forwarding copies of November 1964, Affidavit and Order; January 18,1965, Domand For Jury Trial; and Deposition Order, January 26,1965, all part of Civil Action No. 64 - 3498.

I have been denied my right to Jury Trial. I want my Eatter given the courtesy of a fair Trial. The atterney, Anthony F. Avallane, who initiated this legal action to recover my damages, was forced off my Case, see, horowith, my lotter to Hon. Milton Pollack, July 27,1972.

Here are the list of names with their addresses of the lawyers. who did plot to destroy my life and interests; as you will note, via my correspondence setting forth my copied signed Contract Documents, with my Case Brief presentation, together with supporting evidence papers, discovered, in Search and Discovery, pre-trial presedure.

- 1. Marshall Roomey, 94 Highwood Ave., Manuet, New York Kindly note, his enclosed January 28,1971, A221davit 737/1963 drawn against my interests, in defense of the Prime Contractor for Plumbing Work - I want Arbitration for damages.
- 2. J. Paul Gerardi (associate of Harshall Rooney) 148 Doxter Ave., Pearl River, New York.
- 3. Edward A. Shure, 272 Beach 136th. Street, Belle Harbor, Long Island, New York

Representing:
Piremens Insurence Company of Newark, N. J. e/o Continental Insurance Companies,
Eastern Claims Division,
80 Maiden Lane, New York City, U. Y. 10038

- 4. David H. Moses, 56 Park Ave., Suffern, New York
- 5. Norman A. Caplan, 120 B. 41st., Street, New York City, N. Y. Represented Architect: Caudill, Rowlett & Scott,
 now also at, 230 Park Ave., N. Y. G., N. Y. 10017 and Houston, Texas
- 6. My substituted attorney for Mr. Avalhane. Garbarini, Scher, Delicco & Berardino 500 Pifth Ave., Now York City, N. Y. 10036

Involved firm members:

To: Hon. Mr. Burger From: Carleton Brothers Company

Dated: August 31,1972

Involved firm members:

I - Charles J. Garbarini, 956 Ragewood Ave., Pelham Manor, New York

II - Sam. J. Berardino, 40 E. 80th. Street, New York City, N. Y.

III - Loonard Weinstock, 40 - 52 Wain Street, Flushing, Long Island, W.Y.

I need your most sincero consideration of my demage problem. I have found Judgo Pollack definitely against permitting me to be given a fair Trial, and my day in Court, to state my demages, as I only desired. He elected to help the Pofendents to continue to totally destroy my Contract's rights, finances and twenty-six years of my own business. He refused to let me speak, in my own behalf, and approved of my being personally haracsed in order to submit to my signing Legal Releases (here in after offered), and to be relieved of harasement, and bar my demand claims for damages.

Kindly read all of my Contract's provisions as cited, set forth, in my June 16,1973 letter, and note the descit practiced against no.

Then, I request that you read, Index No. 737/1963 Affidavit of Marshall Rooney, and note the deliberate denial of my Contract's provisions; also, the fact that Sup't. of Schools Edward C. Manning was totally interferring with execution of all site creation work, to save costs, regardless of the Laws, Contracts' signed, etc. with the behind the scene, evident approval of attorney Marshall Rooney. For, I only found out in 1966, while hr. Sawicki was under Oath; he was a student in training for architecture.

I was nover allowed to learn the practiced deceit of me. I would have closed work operations and gone to Court. Because, all possible efforts were being made to financially dectroy me, and secure the authorized required extra work without payment of the costs to me.

I recommend you investigate my charges in my letters, dated.
July 5, July 27 and August 24,1972; also, I offer my letter to
Judge Pollock, of, August 4,1969; while harassment was being particularly pressured against me, from my substitute attorney's office,
together with my Bending Company refusing to financially assist me
to seek the services of another attorney substitution to present my
Case. Russian Police testics could not have been worse, to force me
to dispair of being entitled to redress of my demages via Trial or
otherwise. I was pushed against a wall and threatened, too.

Judgo Pollack evidently approved. For, he told me that he knew all those lawyers well, and worked along with them, from March 13,1969

Continued Sheet 3 TO: Hon. Mr. Burger From: Carleton Brothers Company pated: August 31,1972

until January 1970, when they confiscated more money - collateral, to avoid my being given the Trial, I still want and then expected, to get me to sign the logal releases to those, who have totally impoverished and demaged my reputation in the business world.

I have presented my letter of August 25,1970, that speaks the advice and attitude of others actually conversant with the industry's public works legal conditions, for site development of Public Work Construction projects within New York State. And, you can read Judge Pollack's, September 17,1970 letter in reply.

I went to The Federal Court, to secure Justice, and beat the likes of Mr. Moses and Mr. Rooney, in their New York, Rockland County Court.

How can I secure redress of my damages and penalize my Bonding Company for their deceit and aid toward my destruction?

The Board of Education refused me redress against the other Prime Project's Contractors damages, delays were caused by strikes, under manned work, refusal to abide by written initiate stated scheduled areas of work to be scheduled amongst clauses of Contracts progress performance, work gnaranteed by their 100% posted performance bonds. When I learned that their delays were deliberate, and approved by architect's site representative, Kr. Richard R. Sawicki, and Sup't. of Schools Manning, I had no impartial contract authority.

The clause, Ponalty for Failure to Complete on Time - Supplementary Gonoral Conditions, page 1.8, paragraph 1.16; did not provide that all domages must be levied against the General Contractor, whose only Bonding Company was called into execution of The Project, who was continually prohibited to learn the practiced deceit against him.

Kindly notice the mandatory contract arbitration provision - Supplementary General Conditions, page 1.10, paragraph 1.22 A.

It might be very demaging to Architect and Ormer, if you learn, when, if ever, Mr. Richard R. Savicki, the architect's Pearl River, New York, high school project 296 construction site representative secured an Architect's License to practice within the State of New York.

I would appreciate to opportunity to scoure another Attorney to present my damages during a fair Trial, without any further resumption of the Defendant's Motion Practice, that already has lasted too many years against me in this Matter 64 CIV 3498.

Respectfully, Carleton Brothers Company

Robert A. W. Carleton, Jr.

EXHIBIT Y ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

OFFICE OF THE CLERK WASHINGTON, D. C. 20543

September 7, 1972.

Mr. Robert A. W. Carleton, Jr. 1078 Anderson Avenue Palisade, New Jersey

Dear Sir:

The papers which you have submitted for filing are returned for their failure to comply to any extent with the Court's Rules of Procedure, a copy of which is enclosed.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

E. C. Schade Assistant

Enclosure

mh1

Telephone 201 - Carleton Brothers Company
WHitney 3-0328

1078 ANDERSON AVE. Palisade, N. J.

GENERAL CONSTRUCTION

07024 December 8,1972

Ethics Committee, Now York Bar Association, 36 W. 44th. Street, New York City, W. Y. 10036

Re: Bigned Contract for General Construction Work, new high school, Pearl River, New York, August 9,1960.

Gentlemon:

I have been seriously damaged. My property and business were systematically destroyed by the efforts to refuse me all legal and the stipulated re-dress stipulated by contract.

My enclosed correspondence, indicate my efforts to recover my damages, prior to seeking your sid. All the named lawyers have refused to try to let me seek the economic damages that I have suffered. I want your help to correct all of the wrongs done against me.

The young man, Bichard R. Sawicki, was totally incompitant with respect to all established logal standards, to represent an architect, on any public construction works project. Observe the letters that he wrote against the logally awarded contracts; stipulated terms, enclosed, as of 22, August, 1960 and 12 October, 1960, totally destroying each specific signed prime contracts terms together with his architectural obligations with the Owner, Board of Education at Pearl River, New York, as of /ugust 9,1960. Mr. Sawicki never acted as the Architect was required by the specific terms within these Contracts, as written amongst it's terms and general conditions.

I have enclosed my inquiry of September 20,1972 to the New York Division of Professional Liconsing, together with their reply of October 12,1972. Under oath, to Anthony Avalone, Esq., Mr. Sawicki admitted to only being an architectural student in training during the time he was represented to all of us signed prime contractors as The Architect, on August 9,1960. Hr. Sawicki failed to act and enforce all the contractural Architect obligations, to impartially inform, co-ordinate and make any effort to expedite this school project's site construction work, for the mutual interest of all contracted parties, or the public's interest. Ho failed to get The Owner to eliminate terrible cite water problems against site construction accessary rork, get public streats built to avoid the contract development delays, require the Coner to provide their guarantood site property bounds, title and right of way for the north site access road sithout a delay; and refused to stop The Owner's employees from all and constant contracted work interference; demand and get romoved, the inofficient prime plumbing and beating contractors. The frehitect. Mr. Sawicki, refused to demand that The Owner pay all of it's contracted authorized ordered extra accounty work, as required by my Contract's Terms.

Mr. Rooney, attorney for The Owner, Board of Education has always refused to permit me to rely on my Contract's rights, under any of it's conditions and terms to be paid for the authorized extra contracted site work. But, Mr. Rooney has undertaken all possible avenues to completely destroy all my contract and occnomic business interests initiating from my having undertaken my Scatract with the Board of Education at Pearl River, May York, August 9,1960. -172-

EXHIBIT Z ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

Sheet 2:
Continued letter: Ethics Committee, N. Y. Bar Association
from: Carleton Brothers Company

I have added the following letters for your further record and examination of my caused damages.

- 1. Spring Valley Water Works and Supply Company. September 14,1960
- 2. Correspondence from Mr. Stobaeus to Mr. Menning September 21,1960
- 3. My letter objecting to Mr. Sawicki's letter October 14,1960
- 4. Mr. Rooney's letter October £4,1960
- 5. Correspondence November 7,1950 from Mr. Stobseus to Mr. Manning
- 6. Jopy of /pril 6.1965 answer to refendant Concr's Interrogatories from me in conjunction with my initiating attorney, Anthony Avalone regarding my Federal Southern District of N. Y. Court effort for re-dress of my damages.
- 7. My August 31,1072 letter to Chief Justice Warren E. Burger
- 8. My letters as of: July 5,1972; July 27,1972; August 24,1972.
 August 4,1969; August 26,1970 Judge Pollack's Sept. 17,1970
 letter: My June 16,1972 letter.

latter: My June 16,1972 letter.
a copy of release forced upon me together with checks exchanged when more personal collateral assets were taken from my Mother and myself.

I know that there must be a place where justice does proveil against all wrong doings. I look to you of the New York Bar Association to cut down all legal wrong practice.

Very truly yours. Carleton Brothers Company

Robert L. W. Carleton, Jr.

RAMO, Jr.:

A

JOHN G. BONOMI

RONALD EISENMAN
PATRICK J. MOYNIHAN
PAUL W. PICKELLE
ALBERT L. RICHTER
ASSOCIATE COUNSEL

MICHAEL AMBROSIO
FAITH E. CARNEY
DAVID A. COBIN
MARY MCDONALD
ASSISTANT COUNSEL

COMMITTEE ON GRIEVANCES
OF
THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
36 WEST 44TH STREET
NEW YORK, N. Y. 10036

ROOM 914

AREA CODE 212 MURRAY HILL 2-0606

December 14, 1972

Mr. Robert A.W. Carleton, Jr. 1078 Anderson Avenue Palisade, N.J. 07024

Re: Matter of Marshall Rooney, Esq.

Dear Mr. Carleton:

This is to acknowledge receipt of your recent letter, together with enclosures, wherein you complained against the above-captioned attorney.

Please be advised that the Committee on Grievances only has jurisdiction over allegations of professional misconduct against attorneys who maintain offices in either New York County or Bronx County. Mr. Rooney does not maintain an office in either county. In addition, your complaint essentially involves questions of fact and law which should be resolved in court.

Accordingly, we are closing our file in this matter. Please advise us as to whether or not you wish us to return your enclosures to you.

Very truly yours,

JOHN G. BONOMI Chief Counsel

-174- Bu

Patrick J. Moynihan Associate Counsel Telephone 201 -WHitney 3-0328

Carleton Brothers Company 1078 ANDERSON AVE.

Palisade, N. J.

GENERAL CONSTRUCTION

07024

December 19,1972

Ethics Committee, New York Bar Association. 36 W. 44th. Street, Room 914. New York City, N. Y. 10036

Ro: Marshell Roomby, Esq., Charles J. Garbarini, Esq. my Counsel, & Federal Judge Milton Pollack

Att. Patrick J. Hoynihan

Gentlemen:

This certified receipt return numbered 953541 letter, is offered to indicate, centrary to your etatement in your receiver 14,1972 letter, that the letterheed of a letter dated April 22,1970 chows the second listed name as Mershall Rooney of Amend & Amend, 15 William Street, New York City, New York County in addition to Tearl River, New York, Marshall Rooney, by your letter must be subject to your jurisdiction as you have stated to me.

why does federal Judge Militan Follack ineist upon denying to me the requested trial for my matter 64 CTV 7498 and eduled to be presented before him March 13.1969? I was never computed or made aware that Judge Pollack must refuse trial of my matter to scoure re-dress of damages not yet relieved. Judge Pollack joined with my counsel, Charles J. Garbarini to insist upon more demages be heaped sgeinst my interests, without adv explaination to me, and without advise to me of my legal rights before him.

Where is the legal relief for sustained damages obtainable, since Judge Polluck refused me trial of my matter 64 CIV 349d and presided over my further damages by insisting that he witness I sign releases to all parties damaging me to afford myself some relief from their harmful actions against all my rights and property?

What right has Charles J. Carbarini to perjure himself to accommodate the interests of Marshall Roomey against my rights and legal best interests? Mr. Garbarini's office is at 300 Fifth Avenue, New York City.

tiow con you get my matter 64 CIV 3498 before the federal court for trial to re-dress me for my damages? I want my day in court without tricks within honest individual So nincers jurisdiction. Do you also deny that I am not entitled to all the stated rights within my signed and guranteed public works construction contract with signed.

Very truly yours. Carleton Brothers Company

RAWO, Jr.:

Robert A. W. Carlston, Jr.

EXHIBIT CC ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION COMMITTEE ON GRIEVANCES THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 36 WEST 44TH STREET JOHN G. BONOMI NEW YORK, N. Y. 10036 CHIEF COUNSEL ROOM 914 RONALD EISENMAN AREA CODE 212 ATRICK J. MOYNIHAN MURRAY HILL 2-0606 PAUL W. PICKELLE ALBERT L. RICHTER ASSOCIATE COUNSEL MICHAEL AMBROSIO FAITH E CARNEY DAVID A. CORIN MARY MCDONALD ASSISTANT COUNSEL January 16, 1973 Mr. Robert A.W. Carleton, Jr. 1078 Anderson Avenue Palisade, N.J. 07024 Matter of Marshall Rooney, Esq. Dear Mr. Carleton: This is to acknowledge receipt of your recent letter, dated December 19, 1972 wherein, in addition to requesting us to reopen our file, you requested our assistance in obtaining a trial for you in Federal Court. Please be advised that, as indicated to you in our letter dated December 14, 1972, your complaint essentially involves questions of fact and law which should be resolved in court and are not within the jurisdiction of this Committee. In addition, we cannot advise you regarding legal matters and cannot represent you in restoring your case to the Federal Court. Accordingly, our file will remain closed in this matter and no purpose will be served by any further communication. Very truly yours, Morgailla Patrick J. Moynihan Associate Counsel PJM:lrs -17620.

EXHIBIT DD ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON,
JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

COMMITTEE ON GRIEVANCES
OF
THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
36 WEST 44TH STREET
NEW YORK, N. Y. 10036

ROOM 914

AREA CODE 212 MURRAY HILL 2-0606

CHIEF COUNSEL

RONALD EISENMAN
PATRICK J. MOYNIHAN

JOHN G. BONOMI

PAUL W. PICKELLE ALBERT L RICHTER ASSOCIATE COUNSEL

MICHAEL AMBROSIO
FAITH E CARNEY
DAVID A COBIN
MARY MCDONALD
ASSISTANT COUNSEL

January 19, 1973

Mr. Robert A.W. Carleton, Jr. Carleton Brothers Company 1078 Anderson Avenue Palisades, New Jersey 07024

Re: Matter of Marshall Rooney, Esq.

Dear Mr. Carleton:

Enclosed are all of the documents which you forwarded to me in connection with the above-captioned matter and which I am now returning in complaince with your request of January 19, 1973.

Very truly yours,

Patrick J. Moynihan Associate Counsel

PJM: lrs

Encls.

EXHIBIT EE ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

201 -

Telephone itney 3-0328

Carleton Brothers Co. 1078 ANDERSON AVE.

27024 Palisade, N. J.

GENERAL CONSTRUCTION

February 13.1973

Emil V. Pilz. Enq., Jarvis, Filz. Buckley & Treacy. 115 Broadway. 7. Y. C., Hem York, 19908

Dear Mr. Pilz:

You were considerate enough of he last Spring to give me your time to hear my problem out, concorning an action that I filed in the federal southern district court for damages.

Well, as you said, it was a motter for the Judge to investigate and correct. I have never been able to get to Judgo Milton Dollock since I departed from your office. His secrectary will not permit me to reach him.

would you like to initiate and handle an action in this matter of fraud worked against my interests by the lawyers involved? I am burdened with terrible debts that I must satisfy, and hard presend to know how to get re-dress to resolve them.

I will sincered appreciate your courtesy and advice. For I am placed in a very difficult position to soley care for my Mother, 86 years old last May 9th., without means to provide her suitable companionship, other than myself. She has excellent health and can be outside travelling around in my car to purchase household items. although her walking limits her.

Sincorely yours.

That a willistick. Robert A. W. Carleton, Jr.

RAMO. Jr.:

EXHIBIT FF ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22, 1974 - IN SUPPORT OF MOTION

JARVIS, PILZ, BUCKLEY & TREACY

ATTORNEYS AND COUNSELLORS AT LAW

EMIL V. PILZ
ROBERT B. JARVIS 11000 10001
CARL E. BUCKLEY
HOMAS B. TREACY
LUCENE SCHAFFEL
GEORGE F. MACKEY
MANUEL F. ABBATE

PUCE J. BERGMAN HOMAS W. MOORE III PETER G. BUCKLEY IORMAN D.ALVY NEW YORK, N.Y. 10006

(212) 227-8150

CABLE ADDRESS: JARPILZ

February 21, 1973

Sincerely yours

Mr. Robert A. W. Carleton, Jr. 1078 Anderson Avenue Palisade, New Jersey 07024

Dear Mr. Carleton:

I have your letter of February 13th. I cannot do anything further for you and I cannot be involved in an action against lawyers.

EVP:am

EXHIBIT GG ANNEXED TO AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO APRIL 22. 1974 - IN SUPPORT OF MOTION

TEPPER AND VERNEY COUNSELLORS AT LAW

BERNARD VERNEY ANNE BOCHSTEIN GEORGE A GOLDEN

JULES B. TEPPER (1923-1972)

66 MORRIS AVENUE SPRINGFIELD, N. J. C7081 (201) 379-1050

February 28, 1973

Mr. Robert A.W. Carleton, Jr. Carleton Brothers Company 1078 Anderson Avenue Palisade, N.J. 07024

Dear Mr. Carleton:

As I told you I would, I spoke with our colleague who handles complex litigation matters, about your situation.

Since I knew very little of the facts there was nothing too much I could tell him, but he is willing to spend a short period of time at his office discussing the matter with you and would then tell you whether or not he would be interested in the case.

Rox 454 His name is Richard Silver, Esq., 1139 East Jersey Street, Elizabeth, New Jersey, and his telephone number is 353-0443.

I would suggest that you telephone him and make an appointment to see him.

> undernelf Very traly yours,

d Verney

BV/sb

201 -

Telephone
WHitney 3-0328

Carleton Brothers Co.

1078 ANDERSON AVE. Palisade, N. J.

GENERAL CONSTRUCTION

March 5,1973

Bernard Verney, Esq., Topper and Verney, 66 Morris Ave., Springfield, New Jersey, 07081

Dear Mr. Verney:

had suffered the loss of your wonderful actionate and friend, Jules E. Tepper. I am sure, that I have never had the pleasure of meeting with a finer gentleman.

thoughtful letter and introduction to Richard Silver, Esq. I arranged and vasited with Mr. Silver. Thank you for your courtesy and consideration for me.

my matter to consider. I will expect to learn within the next couple of weeks how he believes my possible legal problem can be resolved.

given to me to know that you consider Mr. Silver well qualified to properly advise me.

very truly yours.

Robert A. W. Carleton, Jr.

RAWC , Jr .:

AFFIDAVIT OF MATTHEW F. SARNELL SWORN TO MAY 7TH, 1974 IN OPPOSITION TO NOTICE FOR RENEWAL AND/OR REARGUMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted]

STATE OF NEW YORK) : SS.:
COUNTY OF NEW YORK)

MATTHEW F. SARNELL, being duly sworn, deposes and says:

- 1) Deponent is an associate of Amend & Amend, Esqs., attorneys for the named defendants in the above entitled action other than the defendant Caudill, Rowlett & Scott.
- 2) Deponent makes this affidavit in opposition to the application for reargument and/or renewal of the motion brought on behalf of the defendants herein for summary judgment and related relief, such application by plaintiff being pursuant to notice dated April 22, 1974.
- 3) Deponent respectfully submits that on April 10, 1974 the order from which plaintiff seeks relief was entered by the Court granting the two motions brought on behalf of all the defendants herein granting the relief sought thereby.
 - 4) Deponent respectfully submits that nothing

AFFIDAVIT OF MATTHEW F. SARNELL SWORN TO MAY 7TH, 1974 IN OPPOSITION TO NOTICE FOR RENEWAL AND/OR REARGUMENT

contained in plaintiff's affidavit in support of this instant application is sufficient to sustain a reversal of the order entered by this Court April 10, 1974, dismissing the complaint herein. To the contrary, plaintiff's moving affidavit clearly establishes that the stipulation of settlement placed upon the record on December 10, 1969 in the prior action 64-CIV 5498 was not procured by any fraud or duress on the part of any of the defendants herein. Plaintiff's moving affidavit clearly demonstrates the total non-involvement of these defendants with respect to plaintiff's alleged misunderstanding of the settlement agreement. If there was in fact any misunderstanding on the part of plaintiff with respect to the stipulation such mistake or misunderstanding clearly falls within the relationship of the plaintiff and his former attorney.

WHEREFORE, deponent respectfully prays that plaintiff's motion for renewal and reargument be denied.

/s/ Matthew F. Sarnell
MATTHEW F. SARNELL

Sworn to before me this 7th day of May, 1974.

/s/ William R. Dunlop Notary Public

William R. Dunlop Notary Public, State of New York No. 24-6123435 Qualified in Kings County Commission Expires March 30, 1976.

ENDORSEMENT ON PLAINTIFF'S MOTION FOR RENEWAL AND/OR REARGUMENT

ROBERT A. W. CARLETON, JR., D/B/A CARLETON BROTHERS CO., Plaintiff, -V-UNION FREE SCHOOL DISTRICT NO. 8, and others, Defendants.

74 Civ. 812

This is a motion by plaintiff for reargument of a motion by defendants for summary judgment which last motion was granted by endorsed order dated April 5, 1974 and filed April 8, 1974.

The motion for reargument violates Rule 9(m) of the General Rules of this Court; it was not timely made, it is attempted to be supported by affidavits. and there is no citation to authorities overlooked.

Even if there had been compliance with Rule 9(m), the result would be the same because, while the papers for plaintiff are carefully and neatly prepared, there is nothing shown which would justify the grant of the motion to reargue.

The motion is denied.

SO ORDERED.

Dated: May 13, 1974

/s/ Inzer B. Wyatt
INZER B. WYATT
United States District Judge

REPLY AFFIDAVIT OF ROBERT A. W. CARLETON, JR., SWORN TO MAY 9, 1974
- IN SUPPORT OF MOTION FOR RENEWAL AND/OR REARGUMENT

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted]

74-CIV-812-IBW

REPLY AFFIDAVIT

STATE OF NEW YORK)
CITY OF NEW YORK : ss.:
COUNTY OF NEW YORK)

ROBERT A. W. CARLETON, JR., being duly sworn, according to law, deposes and says:

- 1. I am the plaintiff, appearing pro se in the above-entitled action, and make this reply affidavit in further support of an application for the reargument and renewal of a motion brought on behalf of all of the defendants herein for summary judgment and related relief.
- 2. Preliminarily I wish to correct page 5, paragraph 14, of my original affidavit in support of this motion. The last sentence in that paragraph should read: "A copy of that letter is annexed hereto and made a part hereof as Exhibit G."
- 3. Plaintiff notes that in opposition to this motion the defendants assert that on April 10, 1974, the order was entered on the prior motion, the substance of which the plaintiff now seeks reargument or renewal. The defendants assert that pursuant to the local rules the pending motion for reargument or/renewal should have been made within 10 days. The plaintiff asserts that 10 days after the date of

entry of the order of the prior motion was April 20, 1974, a Saturday, and that the following business day was Monday, April 22, 1974, the day upon which the motion was signed. Accordingly, plaintiff respectfully asserts that (1) the motion was timely made; (2) the 10-day time limit does not apply to a motion seeking renewal of a prior motion; and (3) strict adherence to local rules should be waived in view of the circumstances stated in the original moving papers.

- 4. The plaintiff has alleged in his moving papers that a fraud was perpetrated upon the court and himself by an officer of the court who was appearing as plaintiff's counsel in the prior action. At this time plaintiff lacks specific knowledge of facts sufficient to substantiate plaintiff's view that at least one attorney representing one of the defendants herein actively participated in the said fraud. However, the circumstances set forth in the moving papers are such that an evidentiary hearing must be held in order to determine the facts as they existed.
- 5. It is noted that the defense counsel objected to the fact that no memorandum of law was submitted with the original papers and plaintiff respectfully answers that the affidavit submitted in the original moving papers was drawn to include the legal reasoning and the factual basis for this application and further that annexed to this affidavit is a more comprehensive memorandum submitted on this motion.

6. It is respectfully submitted that any allegations made in the moving papers which were not denied in the annexed papers should be taken as true, at least for the purpose of this motion. When these allegations are taken as true, there can be no doubt that the relief sought herein should be granted, and that leave to renew and/or reargue should be freely granted and the matter set down for evidentiary hearing.

WHEREFORE, I respectfully pray that the relief requested in the notice of motion be granted in all respects.

/s/ Robert A. W. Carleton, Jr.
ROBERT A. W. CARLETON, JR.

Sworn to before me this 9th day of May, 1974.

/s/ Steven R. Sauer STEVEN R. SAUER

Notary Public, State of New York No. 31-3-1394440 Qualified in New York County Commission Expires March 30, 1975

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Caption Omitted

SIRS:

NOTICE IS HEREBY GIVEN that ROBERT A. W. CARLETON, JR., d/b/a
CARLETON BROTHERS CO,, Plaintiff above-named, hereby appeals to the United
States Court of Appeals for the Second Circuit from the final judgment
entered in this action on the 10th day of April, 1974 and from an order
entered in this court on the 13th day of May, 1974 denying plaintiff's
motion for reargument of a motion by defendants for summary judgment,
and the plaintiff hereby appeals from each and every part of the said
judgment and order as well as from the whole thereof.

Dated New York, New York, this 10th day of June, 1974.

Yours, etc.

ROBERT A. W. CARLETON, JR.
Plaintiff Pro Se
Office & P.O. Address
1078 Anderson Avenue
Palisades, New Jersey 07024
Tel. (201) 943-0328

TO:

MESSRS. AMEND & AMEND 40 Wall Street New York, New York 10005

Attorneys for Defendants UNION FREE SCHOOL DISTRICT NO. 8

NOTICE OF APPEAL

TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK, GEORGE W. RENC, LEE N. STAPKER, EDWARD C. MANNING, WALTER REINER, and RICHARD STOBAEUS

MESSRS. BERNSTEIN, WEISS, PARTER, COPLAN & WEINSTEIN
120 East 41st Street
New York, N. Y. 10017

Attorneys for Defendant CAUDILL, ROWLETT & SCOTT.

RELEVANT DOCKET ENTRIES

Date	Proceedings
February 20, 1974	Filed Complaint and issued Summons.
March 12, 1974	Filed Summons and Marshals Return. Served: Union Free School District #8, Town of Orangetown, Rockland County, on 2/27/74; George W. Renc on 3/1/74; Lee N. Starker on 2/27/74; Edward C. Manning on 2/27/74; Walter Reiner on 2/24/74; Richard Stobaeus on 3/4/74.
March 14, 1974	Filed defendants Caudill, Rowlett and Scott Notice of Motion. Re: Dismissed Complaint. Returnable 3/29/74.
March 21, 1974	Filed Defendants' Notice of Motion. Re: Dismissed Complaint. Returnable 4/5/74.
April 5, 1974	Filed Plaintiff's Affidavit and Memorandum of Law in Opposition to Defendants' Motions for Judgment dismissing the Complaint.
April 8, 1974	Filed Memo endorsed on Defendants' Motion. Re: 3/21/74. Motion for Summary Judgment. Motion must be granted as indicated and the clerk is directed to enter judgment in favor of the moving defendants dismissing the action as to them, etc. Wyatt, J.
April 8, 1974	Filed Memo endorsed on defendants Caudill et al. Motion dated 3/14/74. Motion for Summary Judgment just be granted. Etc. The clerk is directed to enter judgment in favor of defendants, etc. Wyatt, J.
April 10, 1974	Filed Judgment. Ordered that defendants have Judgment against the plaintiff dismissing the Complaint for lack of jurisdiction of the subject matter. Clerk (Mailed Notice)

RELEVANT DOCKET ENTRIES

Date	Proceedings
April 22, 1974	Filed Plaintiff's Notice of Motion. Re: Reargument. Returnable 5/10/74.
May 10, 1974	Filed Reply Affidavit of Robert A. W. Carleton, Jr., in Further Support of an Application for Reargument and/or Renewal of a Motion.
May 13, 1974	Filed Memo endorsed on Motion dated 4/22/74. Motion is denied. Wyatt, J. (Mailed Notice)
June 10, 1974	Filed Notice of Appeal from judgment entered 4/10/74. (Mailed Notice)
July 1, 1974	Filed Notice of Certification of Record on Appeal.

AFFIDAVIT OF SERVICE

State of New York)
City of New York : ss.:
County of New York)

A. JUNE VICKERS, being duly sworn, according to law, deposes and says:

- 1. That deponent is not a party to the action, is over 18 years of age, and resides in the city, county and state of New York.
- 2. That on the 27th day of August, 1974, deponent served the within joint appendix upon Messrs. Bernstein, Weiss, Parter, Coplan and Weinstein, attorneys for defendant-appellee Caudill, Rowlett & Scott, at 120 East 41st Street, New York, New York 10017, the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the city, county, and state of New York

a. June Vickers

Sworn to before me this

27th day of August, 1974

Notary Public, State of New York

No. 31-6006135
Qualified in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF SERVICE

State of New York)
City of New York : ss.:
County of New York)

A. JUNE VICKERS, being duly sworn, according to law, deposes and says:

- 1. That deponent is not a party to the action, is over 18 years of age, and resides in the city, county and state of New York.
- 2. That on the 27th day of August, 1974, deponent served the within joint appendix upon Messrs. Amend and Amend, attorneys for Union Free School District #8, Town of Orangetown, Rockland County, New York, George W. Renc, Lee N. Starker, Edward C. Manning, Walter Reiner, and Richard Stobeaus in this action, at 40 Wall Street, New York, New York 10005, the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the city, county, and state of New York.

A. JUNE VICKERS

Sworn to before me this

27th/day of August, 1974/

INGE F. De VANEY Public, State of New York

Qualified in New York County Commission Expires March 30, 1974